

United States
Circuit Court of Appeals

For the Ninth Circuit.

CLERE CLOTHING COMPANY, a Corporation,
Appellant,
vs.

THE UNION TRUST & SAVINGS BANK, a Corporation, Trustee
in Bankruptcy of the Estate of PRAGER-SCHLESINGER
COMPANY, a Corporation, Bankrupt,
Appellee.

In the Matter of the Estate of PRAGER-SCHLESINGER COM-
PANY, a Corporation, Bankrupt.

Transcript of Record.

Upon Appeal from the United States District Court for the Eastern
District of Washington, Northern Division.

Filed

FEB 6 - 1915

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

CLERE CLOTHING COMPANY, a Corporation,

Appellant,

vs.

THE UNION TRUST & SAVINGS BANK, a Corporation, Trustee
in Bankruptcy of the Estate of PRAGER-SCHLESINGER
COMPANY, a Corporation, Bankrupt,

Appellee.

In the Matter of the Estate of PRAGER-SCHLESINGER COM-
PANY, a Corporation, Bankrupt.

Transcript of Record.

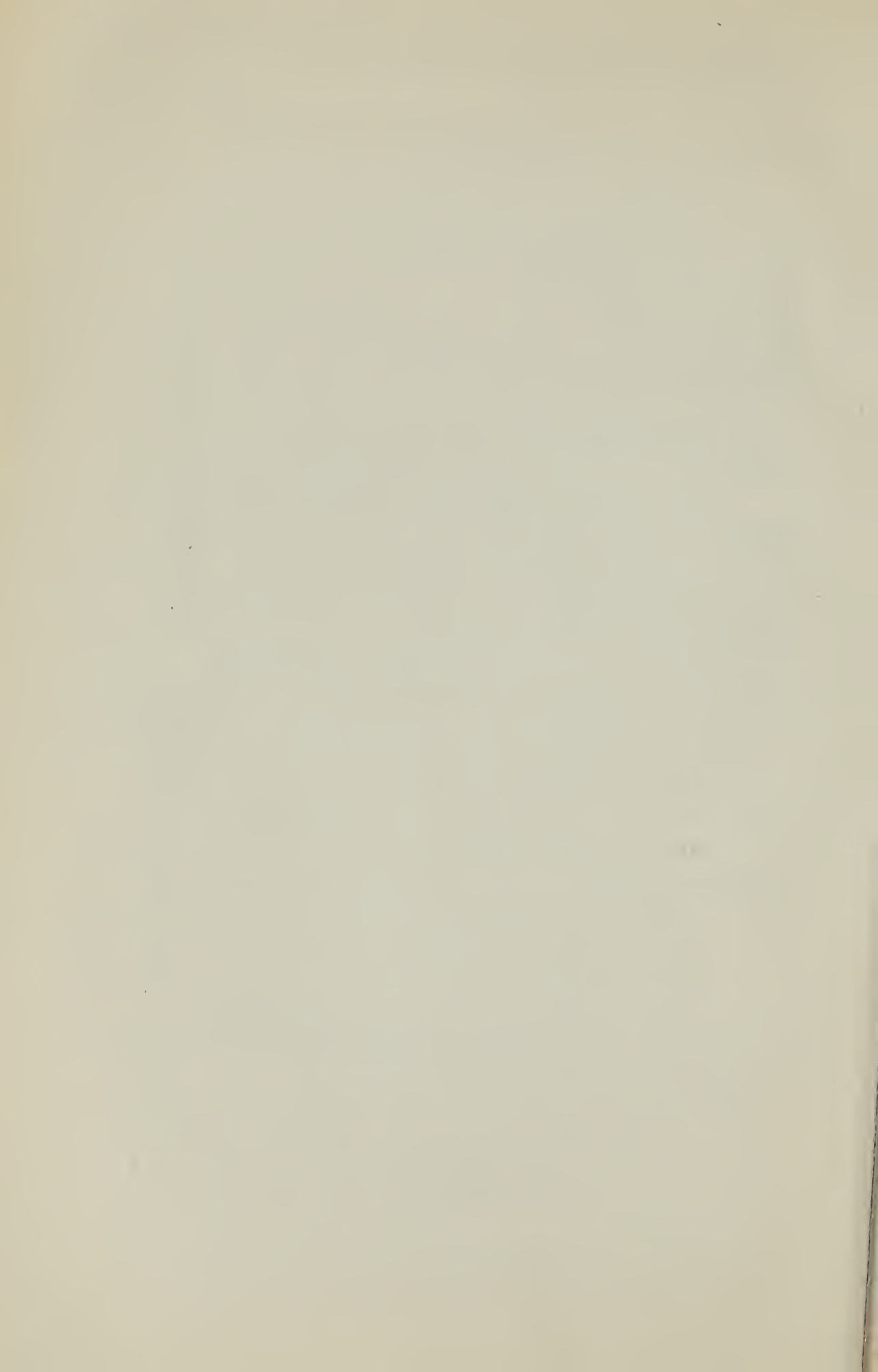
Upon Appeal from the United States District Court for the Eastern
District of Washington, Northern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Assignment of Errors.....	31
Attorneys of Record, Names and Addresses of..	1
Bill of Exceptions.....	39
Bond on Appeal.....	36
Certificate of Clerk, U. S. District Court to Trans- script of Record.....	147
Certificate of Referee in Bankruptcy.....	4
Citation on Appeal (Copy).....	34
Citation on Appeal (Original).....	149
Clerk of Trial Judge as to Evidence.....	142
Memorandum Opinion.....	26
Names and Addresses of Attorneys of Record..	1
Objection to Claim of Clere Clothing Company..	2
Order Affirming Referee's Order Expunging Claim of Clere Clothing Company..	28
Order Disallowing and Expunging Claims of Clere Clothing Company.....	6
Order Extending Time to File Record in Appel- late Court to January 19, 1915 (Original)..	151
Order Extending Time to January 19, 1915, to Prepare Record, and Directing Transmis- sion of Original Exhibits to Appellate Court (Copy).....	146

Index.	Page
Order Extending Time to January 19, 1915, to Prepare Record, and Directing Transmission of Original Exhibits to Appellate Court (Original)	150
Order of Adjudication	1
Opinion of Referee in Bankruptcy	8
Opinion of Rudkin, D. J.	26
Petition for Appeal and Order Allowing Appeal	29
Praecipe for Transcript of Record	143
Proof of Claim of Clere Clothing Co., for \$1,-610.67	152
Proof of Claim of Clere Clothing Co., for \$30,-640.00, etc.	162
Report of Referee in Bankruptcy	4
Stipulation	185
Stipulation Extending Time to File Record in Appellate Court, and Re Transmission of Original Exhibits, etc.	145
Stipulation Re Note and Mortgage of Clara Praeger to Praeger-Schlessinger Co., etc.	86
Stipulation That Clere Clothing Co. have Until January 1, 1915, to Serve, etc. Proposed Bill of Exceptions	38
TESTIMONY ON BEHALF OF TRUSTEE:	
BAILEY, JOSEPH	54
CHILD, DANA	43
Cross-examination	47
Redirect Examination	50
Recross-examination	50
Re-redirect Examination	51



Names and Addresses of Attorneys of Record.

BELDEN & LOSEY, Old National Bank Building,
Spokane, Washington.

Attorneys for Clere Clothing Company,
Claimant.

WAKEFIELD & WITHERSPOON, Peyton Build-
ing, Spokane, Washington.

Attorneys for Union Trust & Savings Bank,
Trustee for Prager-Schlesinger Com-
pany. [2*]

*In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.*

No. 1742—IN BANKRUPTCY.

In the Matter of PRAGER-SCHLESINGER COM-
PANY,

Bankrupt.

Order of Adjudication.

At Spokane, in said district, on the 8th day of Au-
gust, A. D. 1913, before the Honorable FRANK H.
RUDKIN, Judge of said Court in Bankruptcy, the
petition of Clere Clothing Company et al., that
Prager-Schlesinger Company be adjudged a bank-
rupt, within the true intent and meaning of the Acts
of Congress relating to bankruptcy, having been
heard and duly considered, the said Prager-Schle-
singer Company is hereby declared and adjudged
bankrupt accordingly.

*Page-number appearing at foot of page of original certified Record.

WITNESS the Honorable FRANK H. RUDKIN, Judge of said Court, and the seal thereof, at Spokane, in said district, on the 8th day of August, A. D. 1913.

(Signed) W. H. HARE,
Clerk.

Enter:

(Signed) FRANK H. RUDKIN,
Judge.

[Seal of Court.]

[Endorsements]: Order of Adjudication. Filed August 8, 1913. W. H. Hare, Clerk. By S. M. Russell, Deputy. [3]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1742—IN BANKRUPTCY.

In the Matter of PRAGER-SCHLESINGER COMPANY, a Corporation,

Bankrupt.

Objection to Claim of Clere Clothing Company.

Comes now the Union Trust & Savings Bank, trustee of the above-named bankrupt's estate, and moves the Court for the reconsideration and rejection of the claims of the Clere Clothing Company heretofore filed with the referee in bankruptcy on the 25th day of August, A. D. 1913, and allowed by the referee in bankruptcy on the 25th day of August, A. D. 1913, said claims being for the amount of

thirty thousand six hundred forty dollars (\$30,640), and interest from May 21, 1913, also for the amount of sixteen hundred ten and 67/100 dollars (\$1610.67).

This objection and petition for rejection is made upon information and belief and your trustee is informed and is of the belief that the said claims are without consideration and in equity should be rejected in whole.

And for the further reason that your trustee is informed and is of the belief that while said business was conducted as Prager-Schlesinger Company, the ownership, management and control thereof rested in the Clere Clothing Company, said claimant, and that the entire capital stock of the Prager-Schlesinger Company was owned, held and controlled by the said Clere Clothing Company, and that while the business was operated under the name of Prager-Schlesinger Company and Prager, it was owned, operated and controlled by the Clere Clothing Company, and that the said Clere Clothing Company is liable for the debts of the Prager-Schlesinger Company while so operated and controlled, and is not entitled to participate [4] as a creditor in the assets of the said Prager-Schlesinger Company.

WHEREFORE, your petitioner prays that the Court fix a day for hearing of this petition, and that notice be given to the claimants and that upon said hearing the claim of the Clere Clothing Company

filed as above be rejected and disallowed.

(Signed) UNION TRUST & SAVINGS BANK,
By JAS. C. CUNNINGHAM, as its Vice-President.

Trustee in Bankruptcy.

(Signed) WAKEFIELD & WITHERSPOON,
Attorneys for Trustee in Bankruptcy.

[Endorsements]: Received copy this 3d day of December, 1913. (Signed) Belden & Losey, Attorneys for Clere Clothing Company. Objections to Claim of Clere Clothing Company. Filed December 3, 1913, at 5 o'clock P. M. Sidney H. Wentworth, Referee. [5]

[Certificate of Referee in Bankruptcy.]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1742—IN BANKRUPTCY.

In the Matter of PRAGER-SCHLESINGER COMPANY, a Corporation,

Bankrupt.

To the Honorable FRANK H. RUDKIN, District Judge:

I, Sidney H. Wentworth, the Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That in the course of such proceeding an order, a copy of which is annexed hereto, was made and entered on the 8th day of September, 1914.

That on the 9th day of September, 1914, Clere

Clothing Company, a creditor in such proceedings, feeling aggrieved thereat, filed a petition for a review, which was granted.

That a summary of the evidence on which said order was based is included in the opinion annexed hereto.

That the question presented on this review is whether two claims proved against the estate of the bankrupt by the Clere Clothing Company should have been rejected.

I hand up herewith for the information of the Judge the following papers:

(1.) The two claims of the creditor above mentioned.

(2.) The petition on which this certificate is granted.

(3.) The trustee's petition for the reconsideration and rejection of said claims.

(4.) The transcript of the testimony adduced at the hearing, marked Schedules A, B, C, D, and E.

(5.) The Exhibits introduced in evidence, marked Trustee's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26; and Creditor's Exhibits 27, 28, 29, 30, A, B, C and D. [6]

Dated September 9, 1914.

Respectfully submitted,

(Signed) SIDNEY H. WENTWORTH,

Referee in Bankruptcy. [7]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1742—IN BANKRUPTCY.

In the Matter of PRAGER-SCHLESINGER COMPANY, a Corporation,

Bankrupt.

Order Disallowing and Expunging Claims of Clere Clothing Company.

At Spokane, in said district, on the 8th day of September, A. D. 1914.

The Clere Clothing Company having heretofore and on August 25th, A. D. 1913, filed two claims against the above-named bankrupt for \$30,640.00 and interest, and \$1610.67, respectively, and said claims having been on said 25th day of August, A. D. 1913, allowed by the referee in bankruptcy, and the Union Trust & Savings Bank, trustee of the above-named bankrupt's estate, having thereafter and on the 3d day of December, A. D. 1913, filed its petition for the reconsideration and disallowance and expunging of said claims and this matter upon the issue so formed having duly come on for hearing before the undersigned, referee in bankruptcy, on March 20th, 1914, at 10:00 o'clock A. M., the trustee appearing by its attorneys, Messrs. Wakefield and Witherspoon, and said Clere Clothing Company appearing by its attorneys, Messrs. Belden & Losey and H. R. Newton, and the testimony of witnesses having been taken on behalf of said trustee and on

behalf of said claimant; and said matter having been submitted on briefs; and it appearing to the referee in bankruptcy: First, that said claims of said Clere Clothing Company are without consideration; Second, that the Clere Clothing Company and the Prager-Schlesinger Company are one and the same, the latter being merely an adjunct or instrumentality of the former, and that claimant's claims would amount to permitting it to prove debts against itself in fraud of creditors; that the Clere Clothing Company simply conducted [8] a branch office of its business in Spokane, under the name of Prager-Schlesinger Company and endeavored to work the machinery of the Prager-Schlesinger Company, a corporation, in such a manner that if the business failed the creditors and not the Clere Clothing Company would be the principal loser;

IT IS ORDERED that both of said claims of the said Clere Clothing Company above referred to, filed August 25th, A. D. 1913, for \$30,640.00 and interest, and \$1610.67, respectively, be and the same are disallowed in full and expunged from the list of claims upon the trustee's record in said action.

(Signed) SIDNEY H. WENTWORTH,
Referee in Bankruptcy. [9]

[Opinion of Referee in Bankruptcy.]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1742—IN BANKRUPTCY.

In the Matter of PRAGER-SCHLESINGER COMPANY, a Corporation,

Bankrupt.

WAKEFIELD & WITHERSPOON, for Trustee.
BELDEN & LOSEY, for Claimant.

On August 8, 1913, the Prager-Schlesinger Company, a corporation, was adjudged bankrupt upon a petition filed by Clere Clothing Company, Creditors' Claim & Adjustment Company, and A. A. Siegfried. August 25, 1913, the Clere Clothing Company filed two claims against the estate, one for \$30640.00 and interest, founded upon a promissory note alleged to have been given claimant by the bankrupt in payment for a stock of merchandise and fixtures sold the bankrupt by the claimant on January 25, 1913, and one for \$1610.67, alleged to be the purchase price of merchandise sold to claimant subsequent to January 25, 1913.

The trustee has filed a petition for the reconsideration and rejection of both of said claims, upon two grounds, viz.:

1. That the claims are without consideration and in equity should be rejected in whole.

2. That while the bankrupt's business was conducted under the name of Prager-Schlesinger Com-

pany, the ownership, management and control thereof rested in the Clere Clothing Company, the claimant, and that the entire capital stock of the Prager-Schlesinger Company was owned, held and controlled by the Clere Clothing Company, and that the Clere Clothing Company is liable for the debts of the Prager-Schlesinger Company while so operated and controlled, and is not entitled to participate as a creditor in the assets of the [10] Prager-Schlesinger Company.

The evidence shows that in April, 1912, prior to the bankruptcy proceeding now pending, the Prager-Schlesinger Company was adjudged bankrupt upon a voluntary petition. The bankrupt offered a composition of 25%, which was accepted by the creditors and confirmed by the Court. Under this composition \$21474.83 was turned over to the trustee in bankruptcy and distributed in paying the expenses of administration, priority claims, and 25% on the claims of general creditors, and all of the bankrupt's assets were delivered to the bankrupt. The money to carry out the composition was advanced by the claimant, Clere Clothing Company, then one of the Prager-Schlesinger Company's largest creditors, and the bankrupt's assets were turned over to the Clere Clothing Company. The claimant has introduced in evidence a copy of a bill of sale, marked "Creditor's Exhibit 30," which purports to sell all of the bankrupt's assets to the Clere Clothing Company "for value received from Clere Clothing Company, of Syracuse, New York, a corporation, the receipt of which value is hereby acknowledged, and in con-

sideration that the said Clere Clothing Company shall advance and pay to the Court such sums of money as are necessary to effect a composition of the undersigned, Prager-Schlesinger Company, with its creditors at a basis of twenty-five cents on the dollar, and to pay such expenses as are fixed by the Court and are necessarily incurred by said Prager-Schlesinger Company, a corporation, through its duly authorized officers.....". Thomas H. Clere, President of the Clere Clothing Company, testified (P. 22 of deposition) that the Clere Clothing Company advanced to the Prager-Schlesinger Company \$26247.00 to effect the composition. At least \$26000.00 of this amount was borrowed by the Clere Clothing Company of the National Bank of Commerce of Spokane, the Clere Clothing Company giving the bank its three notes aggregating \$26000.00. The loan was [11] negotiated with Dana Child, then Vice-president of the bank, by Thomas K. Smith, Secretary of the Clere Clothing Company, who said that his company had bought or was going to buy the stock of the Prager-Schlesinger Company and was going on doing business, and that the Clere Clothing Company would open an account with the bank. On May 21, 1912, the bank issued a cashier's check to the Clere Clothing Company for \$4272.21 (Trustee's Exhibit 1). This check was paid through the clearing house June 8, 1912, and seems to have been received by the Exchange National Bank. On May 31, 1912, the National Bank of Commerce issued two more cashier's checks to the Clere Clothing Company for \$500.00 and \$21474.83, respectively,

(marked Trustee's Exhibits 2 and 3). The first was indorsed to the Spokane Realty Company and the second was indorsed to the Court and distributed under the composition as mentioned above. The indorsements on Exhibits 2 and 3 show that they were paid through the clearing house June 5th and June 3rd, respectively. There seems no doubt that these three cashier's checks represent the amount that Clere testified was advanced to the Prager-Schlesinger Company to effect the composition. To what use the \$500.00 check to the Spokane Realty Company was put does not appear, but light is thrown upon the check for \$4272.21 received by the Exchange National Bank, by the testimony of Harry L. Cohn, a member of the law firm representing the Prager-Schlesinger Company in the former bankruptcy proceedings, and Edwin T. Coman, president of the bank. Mr. Cohn testified "Mr. Smith (Thomas K. Smith) told me that Mr. Coman told him unless a greater amount was paid to the bank than was paid to the others he would refuse to accept it (the composition), and would prosecute Mr. L. Prager criminally; and for that reason the bank forced them to pay them, as I recall, 50% more than any other creditors." Mr. Coman testified that the bank received \$4272.20 in the bankruptcy proceedings and that by a deal made with Thomas K. Smith it received \$4272.21 for the sale of its collaterals and claim [12] against the Prager-Schlesinger Company. These collaterals were described by Mr. Coman as the personal guaranty of Prager and Schlesinger and several others, and the guaranty of the

Prager Company, which controlled certain mining interests in the Coeur d'Alenes. The bank also turned over a financial statement of the Prager-Schlesinger Company which they were anxious to get.

The estimated value of the assets received from the bankrupt by the Clere Clothing Company was, according to the testimony of Thomas H. Clere, its president, \$30,000.00. Immediately upon receipt of these assets the Clere Clothing Company turned them over to H. L. Gilmore & Company on consignment to sell. The property was insured in the name of Clere Clothing Company. Gilmore & Company remained in charge until the latter part of July, 1912. During this period the Clere Clothing Company added to the stock merchandise invoiced at \$21257.90 (See Exhibit "A") and H. L. Gilmore purchased a little merchandise from Spokane merchants to fill out, amounting to a few hundred dollars. While H. L. Gilmore & Company was in charge a bank account was opened with the National Bank of Commerce under the name of Clere Clothing Company. From the bank's June statement (Trustee's Exhibit 6) it appears that the account was opened on June 10, 1912. While Gilmore & Company was in charge the proceeds of the sale were deposited in this account, and the account was debited by the bank \$10360.12, for which sum the Clere Clothing Company was given credit on its note for money borrowed. (See Trustee's Exhibits 6 and 7.) No checks were drawn on the account during this period.

Very shortly after the confirmation of the com-

position several checks made payable therein to creditors, were, according to the testimony of T. T. Grant, their attorney, turned over either to Smith or to Belden. (Exhibits 9 to 15, inclusive.)

The names of the creditors whose checks went to Smith and [13] the amounts of their respective checks are:

James J. Murphy.....	\$ 89.21
Clara Prager.....	1895.76
Sidney S. Prager.....	31.87
Geo. K. McDowell.....	63.90
Abraham Crystal.....	136.80
Cohn & Rosenhaupt.....	258.60
	<hr/>
	\$2476.14.

The check of Bertram M. Ball for \$810.38 was delivered to Belden. The arrangement under which such a disposition of these checks was made does not appear.

The very last of July, 1912, according to the testimony of Thomas H. Clere and Leon Levy, who did business under the name of H. L. Gilmore & Company, Gilmore & Company, under instruction from Clere, turned over all the property left in Spokane to the Prager-Schlesinger Company to act as selling agents for the Clere Clothing Company. Clere testified that the Prager-Schlesinger Company was not authorized to buy goods on account by the Clere Clothing Company or to carry on business for it. In July, 1912, according to the testimony of Henry R. Newton, who was then, and now is, associated with the firm of Belden & Losey, attorneys for the Clere

Clothing Company, Clere came to Spokane and arrangements were made for consigning the stock of merchandise to the Prager-Schlesinger Company. By these arrangements, Newton testified, the merchandise so consigned and all of the capital stock of the Prager-Schlesinger Company, a corporation, 500 shares, with the exception of one share held by L. A. Schlesinger, was turned over to Clere & Newton, Clere holding 498 shares and Newton one. This transfer, Newton, Belden and Clere testified, was made in trust for the former stockholders, and its purpose, according to Newton and Clere, was to protect the Clere Clothing Company if L. A. Schlesinger should act [14] dishonestly. The agreement was not in writing.

On July 29, 1912, the National Bank of Commerce received a signature card authorizing L. A. Schlesinger to sign checks on the Clere Clothing Company account. (Trustee's Exhibit 5.) The trustee introduced in evidence another signature card (Trustee's Exhibit 4) authorizing the payment of checks on the Clere Clothing Company account when signed Prager-Schlesinger Company, By L. A. Schlesinger. The latter card bears no date. There is no positive testimony fixing the time the second card was given to the bank or by whom either of them was given, but Child thought that both were given the bank by L. A. Schlesinger about July 29, 1912. (P. 32.) From July 31, 1912, until August 12, 1912, a few checks aggregating in amount about \$1,300.00, and signed Clere Clothing Company, By L. A. Schlesinger, were drawn on the account. Thereafter all

checks were signed Prager-Schlesinger Company, by L. A. Schlesinger.

After the agreement made the end of July, according to claimant's evidence, no further change in the relation of the Clere Clothing Company and the Prager-Schlesinger Company took place until January 25, 1913. Between these dates Clere testified that the Clere Clothing Company consigned to the Prager-Schlesinger Company additional merchandise to the value of \$6,024.95. (See Exhibit B.) The next period in the history of the Prager-Schlesinger Company begins with January 25, 1913, and ends with the commencement of the present bankruptcy proceedings. Clere testified that he was in Spokane about January 25, 1913, when L. A. Schlesinger advised him that the Prager-Schlesinger Company wished to buy all of the stock of merchandise, furniture, fixtures and accounts belonging to the Clere Clothing Company which was in the hands of the Prager-Schlesinger Company, consigned to it, for sale. That he told Schlesinger to have an inventory taken, which was done, the inventory showing said property of the Clere Clothing Company to be worth \$30,640.00. This inventory was not produced, but Newton testified [15] that he thought between \$26,000.00 and \$28,000.00 of this sum was merchandise and the balance fixtures, or fixtures and accounts receivable. Belden testified that his recollection was that the merchandise inventoried about \$26,000 or \$27,000, and that the balance was bills receivable, and fixtures. A special meeting of the trustees of the Prager-Schlesinger Company was

held January 25, 1913, at 7:30 P. M., in Belden & Losey's office. T. H. Clere, L. A. Schlesinger and H. R. Newton, all of the trustees being present. Clere offered to sell the said property of the Clere Clothing Company in Spokane to the Prager-Schlesinger Company for \$30,640.00, and to accept the vendee's demand note. This offer was accepted by the unanimous vote of the trustees. At 7:40 P. M. a meeting of the stockholders of the Prager-Schlesinger Company was held at the same place, all of the stockholders, Clere, Schlesinger and Newton, being present, and by unanimous vote this action of the board of trustees was ratified. (See Creditor's Exhibit 29.) No papers or agreements passed between the Prager-Schlesinger Company and the Clere Clothing Company, because of this transaction, except the promissory note for \$30,640.00 upon which one of claimant's claims is based. At a special meeting of the board of directors of the Clere Clothing Company held in Syracuse, New York, on March 4, 1913, the sale was approved. (See Exhibit "C.") Clere testified that subsequent to this sale his company sold outright to the bankrupt merchandise of the value of \$1,610.67 (Exhibit "D") and that nothing has been paid on this account or the note above mentioned. The capital stock of the Prager-Schlesinger Company continued to remain in the hands of Clere, Newton and Schlesinger. At a special meeting of the board of trustees of the Prager-Schlesinger Company held on July 8, 1913, pursuant to notice issued at the request of T. H. Clere, and attended by Clere and Newton, a resolution was passed that the cor-

poration admit its insolvency and willingness to be adjudged a [16] bankrupt. On July 15, 1913, a special meeting of the board of trustees was held, attended by Clere, Newton and Schlesinger, at which the secretary was authorized to consent to the appointment of a receiver. The same persons then met as stockholders and ratified the action of the board of trustees on July 8th and July 15th. (Trustee's Exhibit 16.)

The trustee has introduced in evidence a letter from Thomas K. Smith to L. A. Schlesinger, dated June 27, 1913 (Trustee's Exhibit 19), complaining that Schlesinger had not paid that month's interest on the Clere Clothing Company's loan at the National Bank of Commerce and complaining of poor business during "Pow Wow" week.

Trustee's Exhibit 1 is a note of the Prager-Schlesinger Company for \$500.00, dated March 10, 1913, and made payable to the Clere Clothing Company, together with a letter from Clere to Schlesinger inclosing the above-described note and advising him that some notes Clere had written for on June 14th had not yet been received. Clere testified that this was one of a series of accommodation notes in denominations of \$500.00 given to the Clere Clothing Company by the Prager-Schlesinger Company; that his Company had had as high as \$3,000.00 in such notes; that they had all been paid by the Clere Clothing Company when they became due, and that no charge was made against the Prager-Schlesinger Company.

From the testimony of Josiah Richards, an expert

accountant who examined the bankrupt's books, it appears that entries commenced in the books on June 3, 1912. The books were opened by capitalizing the merchandise at \$40,000.00, the fixtures at \$5,000.00, and the accounts receivable, the old accounts of the Prager-Schlesinger Company, at \$10,011.31. No money was afterwards put in the business outside of money received from the sale of merchandise, except an item of July 10, 1912, of \$810.08, described as the Ball check, two items of \$101.00 and \$48.75, respectively, on June 4, 1912. There [17] are several accounts relating to the Clere Clothing Company, viz.: an account entitled Clere Clothing Company, the first entry of which is June 3, 1912, and the last July 22, 1912; an account entitled Clere Clothing Company consignment, the first entry of which is June 5, 1912, and the last July 22, 1912; an account, the first entry of which is August 15, 1912, and the last January 3, 1913, and another running from February 4, 1913, to June 10, 1913. From the numbering, it appears that the first, third and fourth of these are one account. The ledger and day-book show no note or bills payable to the Clere Clothing Company for \$30,640.00. Asked if from his examination of the books he could say that there was any change in the management at all, or any change in the ownership of the business from the first week in August, 1912, up to July, 1913, Richards testified (P. 138): "The books indicate that there was no change during the period from June 1st to the last entry in the books in July, 1913; that is, from June 1, 1912, the accounts continue dur-

ing the entire time. There are no closing entries. There was no inventory taken; there is no record of any bills payable in the books that would indicate a sale. Every account continues during this period without having been closed." From June 3, 1912, to August 1, 1912, a Mr. Gilmore received a percentage on all goods sold. From August 1, 1912, to the last entry in the books, the latter part of July, 1913, Gilmore receives no more payments on account of goods sold, nor does his name appear in the expense account, but salaries are paid to Prager and Schlesinger. The claimant calls attention to the fact that the two pages of the ledger on which appear the first two of the Clere Clothing Company accounts mentioned above are creased, intimating that the creasing was for the purpose of closing the accounts. There is no testimony that the creases were made for that purpose. There is an interest account showing that from August 9, 1912, when the first entry was made, until June 2, 1913, there was interest paid [18] monthly on an indebtedness to the National Bank of Commerce. There is no account in the books showing that the Prager-Schlesinger Company was indebted to the National Bank of Commerce. These payments were charged as an expense against the business. The entries on this interest account show that \$210.34 interest was paid to the National Bank of Commerce between January 25, 1913, and June 2, 1913. The entry in the merchandise account under January 25, 1913, shows a debit balance of \$25,007.02. That is, obtained by taking the merchandise at the \$40,000.00 valuation

that the business began with on June 3, 1912, and adding thereto all purchases of merchandise, and deducting therefrom all gross sales of merchandise. This merchandise account was opened on July 27, 1912, showing a balance of \$27,576.51, which balance is the difference between the \$40,000.00 at which the merchandise was capitalized on June 3, 1912, plus merchandise purchased from June 3d to July 27, 1912, less cash sales. On the Clere Clothing Company consignment account, above referred to, the Clere Clothing Company is given credit for goods shipped to the Prager-Schlesinger Company and the account is charged with sundry payments made on account of these goods. The entries on the credit side purport to show that they were made under dates running respectively from June 5th to July 8, 1912, but that the goods were shipped from the Clere Clothing Company from April 17th to June 28, 1912. The credit entries amount to \$21,257.90. The books show that the following debits scheduled by the bankrupt were for goods sold prior to January 25, 1913:

Cluett, Peabody & Company.....	\$346.30
Dogg Dervedon & Company.....	271.35
H. E. Iman & Sons.....	143.50
Lorenz Knit Goods Co.....	180.00

\$941.15.

Exhibit 21, introduced by the trustee, consists of a [19] number of invoices of the Clere Clothing Company prior to January 25, 1913, and subsequent to July 29, 1912, which check with the Prager-Schlesinger Company's books. One, dated August

8, 1912, indicates that the goods were sold to H. L. Gilmore & Company, admitted by Newton to be the same as Clere Clothing Company (See P. 145). The others indicate that the goods were all sold on open account by the Clere Clothing Company to the Clere Clothing Company at Spokane, Washington, on terms, either net or 7% November 1st, or 7% December 1st. Exhibit 20 is two invoices, one dated February 4, 1913, showing goods to the value of \$864.50 sold by Clere Clothing Company to Clere Clothing Company. This is the same invoice as the first of Claimant's Exhibit D, which shows that the goods were sold to Prager-Schlesinger Company. The other invoice, dated March 12, 1913, shows goods to the value of \$649.00 sold to Prager-Schlesinger Company.

The bank account was carried in the name of the Clere Clothing Company from the time it was opened until the bankruptcy. Clere testified (P. 67 of deposition), that he didn't know that the account was carried in this manner until the summer of 1913, and (P. 73), that he never received a check from the Spokane store conducted under the name of the Prager-Schlesinger Company signed in any other way than Prager-Schlesinger Company by Louis A. Schlesinger, President. Dana Child, vice-president of the bank testified (P. 23), that the reason the bank account was carried in the name of the Clere Clothing Company was because "they were the only people that we had any business with. They were the people that we were doing business with."

Under the first objection the trustee has under-

taken to prove that the \$30,640.00 note was not in fact given for the purchase of the Clere Clothing Company's property in Spokane, but that it was given to square accounts between the two corporations that [20] it represents the money the Clere Clothing Company had advanced for the composition, (including \$4,736.02 to pay its own claim in full, \$4,272.20 paid to the Exchange National Bank and expenses of the Clere Clothing Company for attorneys' fees, etc., to the amount of \$3,640.00) plus the value of all goods it had shipped to Spokane, less the money it had already got back from sales, and the return of the dividend checks of various creditors. The trustee insists that the above items of \$4,736.02, \$4,272.20, \$3,640.00 and also the amount of dividend checks turned back by creditors should be deducted from claimant's claim on the \$30,640.00 note. To prove this theory the trustee relies upon the testimony of Richard W. Nuzum, a Spokane lawyer, who represented Schlesinger, Prager and his wife, in a suit brought by them against the Clere Clothing Company just before the present bankruptcy proceedings, and represented the trustee at the taking of the deposition in Syracuse. Nuzum testified that in June or July, 1913, he had a conversation with Clere in Belden's office for the purpose of ascertaining the exact amount of money and merchandise that went into the \$30,640.00 note. That he read to Clere from Trustee's Exhibit 17, a statement prepared by L. A. Schlesinger and told him that Schlesinger claimed that these were the items going into the note (See P. 109), and that the only item Clere disputed

was Belden & Losey, \$250.00; that Clere had claimed that the note represented the amount of the inventory (the one said to have been prepared at the time of the alleged sale on January 25, 1913). Nuzum testified that he had had this inventory; that he didn't examine the items, but that he did know that the total was \$27,254.40, as appears on Trustee's Exhibit 18. (Pp. 124 and 125.) Newton and Belden testified substantially (Pp. 161-162 and 174-175) that the inventory showed the Clere Clothing Company's merchandise and fixtures to amount to \$30,640.00. Belden swore that he wrote the note, and that he took the figures from the inventory before him. Clere's testimony on this [21] subject is damaging. While answering the leading questions of his attorney, Thomas K. Smith, he makes a good witness for the claimant. When cross-examined by Mr. Nuzum, he was evasive, showing a surprising lack of memory of things that a man in his position would naturally know something about and remember, especially things that would hurt his side of the case, and at least leads me to suspect that more than the stock and fixtures was taken into consideration in figuring the amount of the note. (Pp. 55 to 62 of deposition.) Another bit of evidence that strengthens this suspicion is the fact that the books show that on January 25, 1913, all the merchandise on hand amounted to about \$25,000.00, which must have included an item on the inventory mentioned by Newton (P. 161) showing that there was somewhere between \$4,000.00 and \$6,000.00 worth of goods that did not belong to the Clere Clothing Company. If

at the time the books were opened the merchandise was actually worth \$30,000.00 as Clere testified, instead of \$40,000.00 as shown by the books, the Clere Clothing Company stock on hand on January 25, 1913, was worth but from \$9,000.00 to \$11,000.00. And even if Schlesinger thought the \$40,000.00 valuation when the books were opened was correct, still the Clere Clothing Company merchandise on hand January 25th was worth only from \$19,000.00 to \$21,000.00, and it seems that the note must have been given for something else besides stock and fixtures. Still, assuming this to be so, it has not been shown with any degree of certainty for what else it was given. Exhibit 17 was prepared by Schlesinger in his own behalf at a time when he was suing Clere. He gives no testimony concerning it. And Clere's conversation with Nuzum does not seem to me to be an admission that the items, or any particular item shown on the statement did or did not go into the note.

I believe that the contention of the trustee that the Clere Clothing Company and the Prager-Schlesinger Company are one and the [22] same, the latter being merely an adjunct or instrumentality of the former, and that allowing claimant's claims would amount to permitting it to prove debts against itself in fraud of creditors, is proved. To be sure the two are distinct corporate entities, but aside from the legal fiction, it appears to me that the Prager-Schlesinger Company is merely a name under which the Clere Clothing Company transacted its Spokane business. It surely had no assets from

the time of the composition until about the 1st of August, 1912, and the books show that no money was put in the business after that except money received from sales. In July, 1912, it even surrendered its capital stock to Clere, who thereafter held it for the protection of the Clere Clothing Company at least, and decided when it should give the Clere Clothing Company a \$30,640.00 note and when it should commit an act of bankruptcy.

The extremely close relationship shown by other facts indicates that the Prager-Schlesinger Company was not independent of the Clere Clothing Company. Clere's letter about the accommodation notes seems more a demand than a request. Smith's letter of June 27, 1913, shows that the business in Spokane was carefully watched. The bank account remained in the name of Clere Clothing Company from the beginning to the end. The books show no change in the ownership of the business, not even a sign of the alleged sale of January 25, 1913. Clere was here twice before the crash and Newton here all the time. Had the Prager-Schlesinger Company been an independent corporation with which the Clere Clothing Company was doing such a big business, it seems that the knowledge of Clere and Newton of the Prager-Schlesinger Company's weak financial condition, would have caused them to notice and correct such a loose manner of banking and bookkeeping. No bill of sale passed by reason of the alleged sale of January 25th. No mortgage was taken. There was nothing in writing relative to the transfer of the stock to Clere and Newton. These [23]

facts, together with the fact that the Prager-Schlesinger Company continued to pay interest on the Clere Clothing Company's indebtedness to the National Bank of Commerce, and charge it to expense, after the alleged sale of January 25th, convince me that the Clere Clothing Company simply conducted a branch of its business in Spokane under the name of Prager-Schlesinger Company, and endeavored to work the machinery of the Prager-Schlesinger Company, a corporation, in such a manner that if the business failed the creditors and not the Clere Clothing Company would be the principal loser.

An order will be made disallowing both of the Clere Clothing Company's claims in full.

(Signed) SIDNEY H. WENTWORTH,

Referee in Bankruptcy.

Dated September 2, 1914.

[Endorsements]: Certificate of Referee on Review of Order Disallowing Claims of Clere Clothing Company, and Referee's Opinion. Filed in the U. S. District Court for the Eastern District of Washington. September 9, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [24]

[Opinion of Rudkin, D. J.]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1742—IN BANKRUPTCY.

In the Matter of PRAGER-SCHLESINGER
COMPANY, a Corporation,
Bankrupt.

MEMORANDUM.

WAKEFIELD & WITHERSPOON, for Trustee.

BELDEN & LOSEY, for Claimants.

RUDKIN, District Judge. This is a proceeding to review an order of the referee disallowing claims of \$30,640.00 and \$1,610.67, respectively, in favor of the Clere Clothing Company. The former is based on a promissory note, and the latter on an open account for goods sold and delivered. The opinion of the referee contains a full and accurate review of the testimony which need not be repeated here. An examination of the entire testimony leaves a strong suspicion that the promissory note of \$30,640.00 was made up of items aside from the purchase price of the stock of goods transferred on the date of the execution of the note. In other words, there is a strong probability that this note was given to make the Clere Clothing Company whole on account of its dealings with the bankrupt and included other items than the single item for goods sold. But if I am correct in this conclusion it would only be ground for reducing the amount of the claim and would not justify its entire rejection. The other question presented by the objections is by no means free from difficulty. But while the two corporations were separate and distinct I am by no means satisfied that the referee erred in his conclusion that the bankrupt was a mere agent or instrumentality through which the claimant transacted its business here and that to allow these claims against the bankrupt would

be a fraud upon other creditors. The order of the referee is therefore affirmed. [25]

[Endorsements]: Opinion. Filed in the U. S. District Court for the Eastern District of Washington. October 8, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [26]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1742—IN BANKRUPTCY.

In the Matter of PRAGER-SCHLESINGER
COMPANY, a Corporation,

Bankrupt.

**Order Affirming Referee's Order Expunging Claim
of Clere Clothing Company.**

This matter coming regularly on for hearing upon the petition of claimant Clere Clothing Company for review of an order of the referee disallowing claims of the Clere Clothing Company of \$30,640.00 and \$1,610.67, respectively, said claimant being represented by its attorneys, Messrs. Belden & Losey, and the trustee being represented by its attorneys, Messrs. Wakefield & Witherspoon; and the Court having heard the argument of counsel and examined the entire testimony and record in the case, and being of the opinion that the opinion of the referee contains a full and accurate review of the testimony; and that the conclusion of the referee that the bankrupt was a mere agent or instrumentality through which the claimant transacted its business in Spokane and that

to allow said claims against the bankrupt would be a fraud upon creditors, is in accordance with the law and the evidence in this case, now, therefore,

IT IS ORDERED, ADJUDGED AND DECREED that the order of the referee denying said claims and expunging same from the list of claims filed herein be and it is hereby affirmed.

Done in open court this 10th day of 'October, A. D. 1914.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Due Service of the Foregoing Order by a True Copy Thereof is Hereby Accepted This 10th Day of October, 1914. (Signed) Belden & Losey, Attorneys for Clere Clothing Company. Order Affirming Referee's Order Expunging Claims of Clere Clothing Company. Filed in the U. S. District Court for the Eastern District of Washington, October 10, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [27]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1742—IN BANKRUPTCY.

In the Matter of PRAGER-SCHLESINGER
COMPANY, a Corporation,
Bankrupt.

Petition for Appeal and Order Allowing Appeal.

In the above-entitled cause, the Clere Clothing Company, a corporation under the laws of the State

of New York, conceiving itself aggrieved by the judgment made and entered on the 10th of October, 1914, in the above-entitled cause, affirming the judgment of the Referee in Bankruptcy, disallowing *in toto* the claims and each of the claims of the Clere Clothing Company, and ordering same expunged from the list of claims filed herein, does hereby appeal from such judgment, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers under which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Spokane, Washington, this 17th day of October, A. D. 1914.

(Signed) BELDEN & LOSEY,
Attorneys for Clere Clothing Company.

[Endorsements]: Petition for Appeal. Filed in the U. S. District Court for the Eastern District of Washington. October 17, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. Due service of the within Petition for Appeal by a true copy thereof is hereby admitted at Spokane, Washington, this 17th day of October, 1914. (Signed) Wakefield & Witherspoon.
[28]

The foregoing claim of appeal is allowed this 25th day of November, 1914, upon the condition that the Clere Clothing Company execute a bond as provided by statute, in the sum of \$5,000.00.

(Signed) WM. B. GILBERT,
Circuit Judge. [29]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 1742—IN BANKRUPTCY.

In the Matter of PRAGER-SCHLESINGER
COMPANY, a Corporation,

Bankrupt.

Assignment of Errors.

In the matter of the petition of the Clere Clothing Company, a corporation under the laws of the State of New York, for allowance of its claims, rejected by the Referee in Bankruptcy, and the order rejecting said claims by the referee having been reviewed by the above-entitled court, and the order of the referee affirmed.

Assignment of Errors by Clere Clothing Company in the above matter made a part of its Petition for Appeal. The said appellants, Clere Clothing Company, come and for error in the order and judgment of said Court herein, denying and disallowing said claims and each of them, and ordering same expunged from the list of claims filed in said bankruptcy proceedings, assign as follows:

1. The Court erred in finding that the opinion of the referee contained a full and accurate review of the testimony, upon the hearing to the objections of the claims of the Clere Clothing Co.

2. The Court erred in holding that the conclusion of the referee that the bankrupt was a mere agent or instrumentality, through which the Clere Clothing

Company transacted its business in Spokane, and that to allow said claim against the bankrupt would be a fraud upon creditors.

3. The Court erred in signing its order and judgment herein complained of, for the reason that said order and judgment is at variance and not supported by the finding of the Court in his opinion handed down in said cause.

4. The Court erred in disallowing and ordering expunged, the claim of the Clere Clothing Company for thirty thousand six [30] hundred forty (\$30,640) dollars, for the reason that the record does not disclose the fact that said claim was made up of items aside from the purchase price of the stock of goods, transferred by the Clere Clothing Company to the Prager-Schlesinger Company on the date of the execution of the note exhibited in plaintiff's complaint, of thirty thousand six hundred forty (\$30,640) dollars.

5. The Court erred in disallowing said claim, and based its opinion for so doing, as suggested in the opinion of the Court, on "strong suspicion" that said claim was made up of items aside from the purchase price of the stock of goods, and not based upon the record or the evidence in the cause.

6. The Court erred in signing said judgment and order complained of, for the reason that said judgment is not warranted by the opinion and findings of the Court herein, but that as shown by the opinion of the Court, same is based not upon fact, but as stated by the Court: "There is a strong probability that this note was given to make the Clere Clothing

Company whole on account of its dealings with the bankrupt, and included other items than the single item for goods sold.” That if said judgment of the Court was in accordance with the fact, the Court erred in not ordering a hearing to determine what of said whole amount, was improperly charged in said item, and in refusing to allow said claim for the amount less such unlawful items included in said claims, as suggested by the Court.

7. The Court erred in holding that the bankrupt was a mere “agent or instrumentality,” through which the Clere Clothing Company acted, and the Court further erred in holding that to allow said claim, or either of said claims of Clere Clothing Company against the bankrupt, would be a fraud against the other creditors.

8. The Court erred in holding and adjudging that that part of the Clere Clothing Company’s claim in the sum of sixteen hundred ten and $67/100$ (\$1,610.67) dollars, should be expunged for [31] the reason that there is disclosed from the record, no evidence that said goods were not sold and delivered, as alleged and set out in the claim of Clere Clothing Company presented before the Referee in Bankruptcy, and for the further reason that the evidence discloses and shows conclusively that the items going to make up said sum of sixteen hundred ten and $67/100$ (\$1,610.67) dollars was sold and delivered in the usual course of business.

WHEREFORE, the said Clere Clothing Company prays that the judgment of the District Court be re-

versed, with directions to said Court to allow its claims.

(Signed) BELDEN & LOSEY,
Attorneys for Clere Clothing Company.

[Endorsements]: Due service of the within Assignment of Errors by a true copy thereof, is hereby admitted at Spokane, Washington, this 17th day of October, 1914. (Signed) Wakefield and Wither-
spoon. Assignment of Errors. Filed in the U. S. District Court for the Eastern District of Washington. October 17, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [32]

United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of PRAGER-SCHLESINGER
COMPANY, a Corporation,
Bankrupt.

Citation [on Appeal (Copy)].

United States of America,
Ninth Judicial Circuit,—ss.

To the Union Trust & Savings Bank, Trustee,
Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in said Circuit, on the 24th day of December, 1914, pursuant to a petition on appeal and assignment of error filed in the Clerk's office of the District Court of the United States for the East-

ern District of Washington, Northern Division, in the matter of Prager-Schlesinger Company, a corporation, bankrupt, to show cause, if any there be, why the judgment rendered in said cause on the 10th day of October, 1914, denying and expunging from the list of claims filed in said cause, the claims of the Clere Clothing Company and disallowing each of said claims, as proved by said Clere Clothing Company before said referee, in the sums of \$30,640 and \$1,610.67, respectively, as in said petition on appeal mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

WITNESS the Hon. WM. B. GILBERT, Judge of said Circuit Court, this 25th day of November, in the year of our Lord, 1914, and of the Independence of the United States of America the one hundred thirty-ninth.

[Seal] (Signed) WM. B. GILBERT,
Circuit Judge. [33]

[Endorsements]: Service of the within Citation admitted at Spokane, Wash., this 27th day of November, 1914. (Signed) Wakefield & Witherspoon, Attorneys for Union Trust & Savings Bank, Trustee for Prager-Schlesinger Company. Citation. Filed in the U. S. District Court for the Eastern District of Washington. November 27, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [34]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

In the Matter of PRAGER-SCHLESINGER
COMPANY, a Corporation,
Bankrupt.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, Clere Clothing Company, as principal, and American Surety Company of New York, are held and firmly bound unto the Union Trust & Savings Bank, Trustee in Bankruptcy for Prager-Schlesinger Company, in the full and just sum of five thousand (\$5,000) dollars, to be paid to said Union Trust & Savings Bank, its certain attorneys or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of November, A. D. 1914.

Whereas, lately, in the District Court of the United States for the Eastern District of Washington, Northern Division, in a matter depending in said court between Clere Clothing Company and the Union Trust & Savings Bank, Trustee in Bankruptcy for the Prager-Schlessinger Company, a decree and order was rendered against the said Clere Clothing Company, denying its said claim and expunging same from the list of claims filed in said bankruptcy proceedings, and the said Clere Clothing Company hav-

ing obtained an appeal and filed a copy thereof in the Clerk's office of the said the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the decree and judgment in aforesaid matter, and a citation directed to the said Union Trust & Savings Bank, Trustee in Bankruptcy for the Prager-Schlesinger Company, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals [35] for the Ninth Circuit, to be holden at the City of San Francisco, in said Circuit, on the 24th day of December, next.

Now the condition of the above obligation is such that if the said Clere Clothing Company shall prosecute its appeal to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) CLERE CLOTHING COMPANY,
By E. H. BELDEN,
Its Attorney.

[Seal of Surety]

AMERICAN SURETY COMPANY OF
NEW YORK,

By FRANK A. PAINE,
Resident Vice-President.

By F. E. BRISBINE,
Resident Assistant Secretary.

The foregoing bond is approved this 25th day of November, 1914.

(Signed) WM. B. GILBERT,
Circuit Judge.

[Endorsements]: Bond on Appeal. Filed in the U. S. District Court for the Eastern District of Washington. November 27, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [36]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

Stipulation [That Clere Clothing Co. Have Until January 1, 1915, to Serve, etc. Proposed Bill of Exceptions.]

In the Matter of the Estate of PRAGER-SCHLESINGER COMPANY,

Bankrupt.

Clere Clothing Company has until January 1, 1915, to serve and file its proposed bill of exceptions, settlement of same to be made thereafter at earliest convenience of the Court, without waiving the right to question jurisdiction of court in granting the right of appeal.

(Signed) BELDEN & LOSEY,

Attorneys for Clere Clothing Company.

(Signed) WAKEFIELD & WITHERSPOON,

Attorneys for Union Trust & Savings Bank, Trustee.

[Endorsements]: Stipulation. Filed in the U. S. District Court for the Eastern District of Washington. November 30, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [37]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

In the Matter of the Estate of PRAGER-SCHLES-SINGER CO., a Bankrupt.

Bill of Exceptions.

BE IT REMEMBERED, that in the above-entitled cause, same came on for hearing from time to time, upon the exceptions filed to the claims of the Clere Clothing Co., the Trustee being represented by its attorneys, Wakefield & Witherspoon, and the claimant, Clere Clothing Co. being represented by its attorneys Belden & Losey.

The following evidence was offered in resistance to the allowance of said claim, and in support of same, to wit: [38]

[Testimony of Harry L. Cohn, for Trustee.]

HARRY L. COHN was called as a witness on behalf of the Trustee and testified as follows:

My name is Harry L. Cohn and I am a practicing attorney at law in Spokane, and was during the fore part of the year 1912 one of the members of the firm of Cohn, Rosenhaupt & Grant. The firm of Cohn & Rosenhaupt represented Praeger-Schlessinger Company in the former bankruptcy proceedings in the District Court of the United States for the Eastern District of Washington, Northern Division, being Case No. 1343 being the case previous to the one now on hearing. That bankruptcy proceeding was closed by composition some time in 1912 and we were

(Testimony of Harry L. Cohn.)

the attorneys for the Praeger-Schlessinger Company in those proceedings up to and including the time of the composition. I was acquainted with Mr. Smith who was in Spokane at the time of the bankruptcy proceedings, presumably representing the Clere Clothing Company, and it was my understanding that he was acting as representative of the Clere Clothing Company while here. I had several conversations with him with reference to the composition made prior to the composition taking effect. I presume a month or six weeks previous, we were discussing it from time to time. I had no direct conversation with the Clere Clothing Company with reference to taking over the business of the Praeger Company and running it for the Clere Clothing Company. We had a number of conversations in regard to the Clere Clothing Company furnishing the money for the composition, and permitting the Praeger people to attempt to pull it out of debt. I could only give you my general impression of what the substance of these conversations were. I would not pretend to represent any conversation or even the substance of any conversation. I can only give you my understanding of what the conversations lead up to meant, that is my recollections of the conversations. My [39] understanding of the conversations was that the Clere Clothing Company was to advance the money for the composition: That part of the money was to be returned to them on certain claims, for instance the claims we had and other claims. The amount of the composition was to be returned to them, and Schles-

(Testimony of Harry L. Cohn.)

singer, as I recall, was to have charge of the business and at such time as the debts were paid they would turn over to him the residue of the stock on hand. I don't know whether or not the capital stock of the corporation was turned over to Mr. Smith or to the Clere Clothing Company for that purpose, and was surprised when I heard that the name Praeger-Schlessinger Company was to be used after that. I didn't know anything about that. My understanding was that Schlessinger was to have charge of it and that the Clere Clothing Company was advancing the money and at any time that he could pull the place out of debt the stock was to be turned over to him. I mean the merchandise stock; I don't mean the capital stock. As to whether or not there was any agreement in that conversation whereby the Exchange National Bank was to receive the preference or a sum in addition to 25%, I can only tell you what Mr. Smith told me about that. I remember distinctly that conversation. Mr. Smith told me that Mr. Coman told him unless a greater amount was paid to the bank than was paid to others, he would refuse to accept it and would prosecute Mr. L. Praeger criminally and for that reason the bank forced them to pay them, as I recall, 50% more than any other creditor. I do not know whether that was paid or not. Mr. Smith told me that the bank would block the composition unless they got more money and that they were forced to give it to them. With reference to the claim of Cohn & Rosenhaupt, as to paying it back, we didn't accept a check. There was

(Testimony of Harry L. Cohn.)

a friendly relation between Praeger and Schlessinger and the members of our firm. When the composition [40] was made we gave them back their money. I don't believe we ever took any money in any way from them. I don't know whether or not that check was turned over to Smith or to Praeger and Schlessinger; Mr. Grant did it. I don't know whether he endorsed the check or how he gave it, but I will tell you I know we did not take it; we gave it back. We got \$125.00 or something like that and we gave it back to them. I understand a number of the other creditors did the same thing. That is they gave back their check for the purpose of putting the composition through and in order to help these people out.

Cross-examination.

It may be a fact that Mr. Smith told me that he had purchased the claim of the Exchange National Bank. Whether he purchased it or whether they were taking a larger amount I don't know, I know that it was costing more than the others and that may be true. He may have purchased it, I don't know. Mr. Smith may have told me that he had purchased that claim. I have not any independent recollection of that. We had a valid claim against the Praeger-Schlessinger Company and so far as I know, the other claims where the checks were given back were also valid claims, especially the claim of Mrs. Louis Praeger who practically bankrupted herself in order to give it back.

[Testimony of Dana Child, for Trustee.]

DANA CHILD was called as a witness on behalf of the Trustee and testified as follows:

My name is Dana Child and I reside in Spokane, and was Vice-president of the National Bank of Commerce during the year 1912 and had dealings with the Clere Clothing Company during the year 1912, that is the bank had dealings. I had conversations with Mr. Thomas K. Smith representing the Clere Clothing Company in reference to some loans by the bank. I understood he was '[41]' acting as attorney for the Clere Clothing Company. He did not represent to me that he was an officer of the company. I had sole charge of the dealings and transactions with Mr. Smith. I had some conversations with Mr. Smith with reference to borrowing certain moneys from the bank. He wanted to borrow a certain sum of money; I have forgotten the amount, I didn't think it was as heavy as \$26,000.00. My recollection is somewhere about \$24,000 but I couldn't say. I was thinking about 24,000 that the Clere Clothing Company wanted to borrow and went on through the conversation in regard to whether we would loan him that much money. We took it up and got a line on the Clere Clothing Company and we loaned him the money. He told me what it was for, that they had bought or were going to buy the stock of the Praeger-Schlessinger Company and go on and do business. He further stated that they were going to carry an account with our bank and that they would run that business, and

(Testimony of Dana Child.)

I think it was the verbal agreement that they should carry thereafter about 20% of the loan as a daily balance, but this agreement was for no particular time, and they afterwards opened a checking account, and that is what I have referred to as a daily balance. There was an account open in the bank in the name of the Clere Clothing Company which was carried as such perhaps about a year. It was not carried as the Clere Clothing Company until this last bankruptcy, it didn't run that long. It was closed before the Receiver was appointed by the Court. My recollection is that some time last spring they were keeping no account, that is there was no money being deposited and virtually no money there. There might have been a dollar or less and I wrote to the Clere Clothing Company and told them we would have to call our loan, that they were not depositing any money and the account wasn't worth anything. I should say there was a small balance there until the Receiver was appointed. I [42] could not really say whether that letter I wrote to Mr. Smith was some time in 1913. There was some balance on these notes and I threatened to call it and then the loan was afterwards taken up. I imagine at the time the checking account was opened I took the signature cards, but I could not testify as to when I took the signature cards; if the account was opened with me I would take the signature cards. Whoever opens the account—sometimes these accounts are opened by the president, sometimes the vice-president and sometimes the cashier, but whoever opens

(Testimony of Dana Child.)

the account takes the signature cards. At all times from the time the account was opened in 1912 until it was closed in 1913, it was always carried as the Clere Clothing Company account, and there was no change or any directions to make a change, and that was operated under my understanding with Mr. Smith. (It was here conceded by counsel for the Clere Clothing Company that Thomas K. Smith was Secretary of the Clere Clothing Company at the time of these bankruptcy proceedings.)

Referring to Cashier's check No. 3309 I remember how that happened to be used. A note was given to the bank for it. I didn't talk with Mr. Smith in reference to the issuance of that cashier's check—I had no conversations with him in reference to that. I haven't the note that it was given for. The note was paid and delivered up and I am quite sure it was mailed to the Clere Clothing Company, Syracuse, New York. The note was signed Clere Clothing Company by Thomas K. Smith. We had resolutions from the Clere Clothing Company authorizing him to sign it and authorizing the loan to be made. I doubt whether we have those resolutions in the bank, I think they were returned when the notes were paid. That was before the last bankruptcy proceedings. I don't remember when it was, but I know that is the usual way we do, when the matter is closed all papers in the case are returned. [43] As to the endorsement on that cashier's check I couldn't say whether or not that is the endorsement of Mr. Smith.

(Counsel for the Clere Clothing Company here

(Testimony of Dana Child.)

admitted that the signature on the back of the check is that of Thomas K. Smith.) The endorsement shows that it was paid through the Clearing House on the 8th of June. (Said paper was marked "Trustee's Exhibit 1"). As to cashier's check No. 3336 that was issued on account of the note given us by the Clere Clothing Company. These notes are the notes I referred to when I testified to my conversation with Mr. Smith. As to check No. 3337 that was given earlier. For these cashier's checks one note was given. There were not three notes, I might be mistaken about that. I took one of these notes, I think to the First National Bank at Hillyard—\$2500.00—I think there were two for \$2500.00 and the other for \$1900.00. Those were all signed by the Clere Clothing Company. Those payments were made on those notes from time to time by the Praeger-Schlessinger Company. They were not paid in full but payments were made by checks issued by Praeger-Schlessinger Company. I don't recollect whether or not all the interest on these notes, from the time they were given up to the time of the receivership just preceding this last bankruptcy, was paid through checks issued by Praeger-Schlessinger and paid out of the Clere Clothing Company account.

(Said checks were marked respectively, "Trustee's Exhibits 2 and 3.")

As to whether or not the interest on these notes were paid by checks signed Praeger-Schlessinger Company by Schlessinger and drawn out of the Clere Clothing Company account from the time

(Testimony of Dana Child.)

they were issued up to the time of the last bankruptcy proceeding, I might be mistaken but I don't think so. There were items of Forty-five dollars and some odd cents monthly items of interest on these notes but I don't think they paid all the payments that were [44] made. Interest was paid by the business here in Spokane that was conducted under the name of the Praeger-Schlessinger on these notes from time to time. Up to some time in June, 1913, in the spring Clere quit paying and then is when I called the loan. I think a great many of the principal payments were made on these notes through this Praeger-Schlessinger business. These cards that you show me are signature cards of the Clere Clothing Company representing the account carried in our bank given us by Mr. Schlessinger. That was the account I referred to that Mr. Smith agreed to carry in our bank. We had no account other than the Clere Clothing Company account in which the Praeger-Schlessinger business was transacted. All of the checking business here done as Praeger-Schlessinger was carried in the Clere Clothing Company account. The checks were signed Praeger-Schlessinger Company. I couldn't answer whether some of the checks were signed Clere Clothing Company.

(Said cards were marked Trustee's Exhibits 4 and 5 respectively).

Cross-examination.

(By Mr. BELDEN.)

Q. Now, this account was carried in the name of

(Testimony of Dana Child.)

the Clere Clothing Company, was it not, Mr. Child, for the reason that the comptroller of the currency or the bank examiner would require that as you had made the Clere Clothing Company the loan the account should be carried in the name of the Clere Clothing Company? State what are the facts as to that.

A. I would not loan anyone any money if they didn't have an account.

Q. And that was the reason why the accounts were taken in the name of the Clere Clothing Company—was it not one of the reasons?

A. Well, I loaned the Clere Clothing Company and the agreement was that it was. [45]

Q. How did it come that you paid the checks of the Praeger-Schlessinger Company then on the Clere Clothing Company account?

A. Well, Mr. Belden, of course, there is one thing that is kind of careless and I will have to acknowledge that I can't explain that satisfactorily, because there is no explanation that can be made. It was done.

Q. The only reason for carrying the account in the name of the Clere Clothing Company is because they were large borrowers at the bank, is it not?

A. Well, they are the only people we had any business with.

By Mr. WITHERSPOON.—They were what?

A. The only people that we had any business with. They were the people that we were doing business with. This account in the name of the Clere Cloth-

(Testimony of Dana Child.)

ing Company was started June 29th about the time that Gilmore was running the business. They didn't commence doing business up there before July 29th. This signature card wasn't given at the time the account was opened. It could not have been, because Gilmore opened the account of the Clere Clothing Company. Gilmore was running the business for the Clere Clothing Company after the composition had been made and the stock turned over to the Clere Clothing Company. I couldn't say whether or not at the time this signature card was taken Mr. Smith was there. I couldn't say whether or not the signature card was signed about the time that they moved from the Riverside Place to 111 Howard. I don't recollect the time when they moved. I knew Mr. Gilmore who had been conducting the sale for them up on Riverside Avenue and during the time he was conducting that sale the account was carried as the Clere Clothing Company. Then afterwards they moved from the Riverside location to Howard Street. I don't remmber about the time Mr. Gilmore left, when they quit their sale up there he left. I don't recollect in regard to the month. [46] I don't know whether it was taken by Mr. Gilmore or under Mr. Gilmore's direction or not. I couldn't really answer as to whether checks drawn by the Clere Clothing Company and all other checks drawn which were paid upon the account of the Clere Clothing Company were signed Praeger-Schlessinger Company, because I never see the checks that come into the bank. I didn't look over the checks a short time

(Testimony of Dana Child.)

ago with Mr. J. D. Campbell and Mr. Belden. We would see the figures on the ledger from the checks.

Redirect Examination.

These debit slips and monthly statement shown to me show the payment of these notes where we debited the account at the time I had my conversation with Mr. Smith in reference to this checking account it was understood that Mr. Schlessinger was to handle the business here and the money was to be checked out by Mr. Schlessinger. The understanding with Mr. Smith was that as fast as Mr. Gilmore took the money in, I could charge up to their account whatever was over \$500.00 or \$800.00—it was either \$500.00 or \$800.00,—charge it up to the notes. It was understood that the Clere Clothing Company was to operate the business here and that whatever came in we could charge up over \$500.00—either \$500.00 or \$800.00. They wanted enough left on hand so as to pay running expenses. That was the agreement with Mr. Smith and we did so from time to time.

(Said papers were marked “Trustee’s Exhibits 6 and 7.”)

These papers or statements shown to me are monthly statements of the Clere Clothing Company account with the National Bank of Commerce.

(Said paper composed of 11 sheets, was marked “Trustee’s Exhibit #8.”)

The account was carried by our bank up to June, 1913.

Recross-examination.

The Praeger-Schlessinger Company wasn’t a de-

(Testimony of Dana Child.)

positor with our bank [47] before they went into bankruptcy. Their place of business was in the Realty Building on Riverside. In May or June, when Mr. Smith came to Spokane when he borrowed the money from us—twenty odd thousand dollars, he told me that the Clere Clothing Company was going to buy the stock of the Praeger-Schlessinger Company. I would not say who he was going to buy the stock from. He said they were going to put on a sale and that the Clere Clothing Company did put on a sale at the Realty Building, but H. L. Gilmore was in charge of that sale. Mr. Gilmore deposited money in our bank as long as he was here. He deposited money in our bank and I imagine those signature cards were made just about the time he ceased depositing money in our bank—about the time Mr. Gilmore left town. I think that when Mr. Gilmore turned the stock over to Louis Schlessinger, I took these deposit memorandum slips from Louis Schlessinger. I don't think Mr. Smith was in town at the time I took these deposit slips from Schlessinger. This conversation that I referred to took place at the time the note was executed along in May or June.

Re-redirect Examination.

I didn't have any instructions at any time to change that account or change the form of checking against that account. I didn't from time to time send statements or letters to Mr. Smith of the Clere Clothing Company in reference to interest payments on the notes. I renewed the notes from time to time. The notes would show the interest payments. We would

(Testimony of Dana Child.)

endorse the interest payments on the back and the different payments. We did not at any time receive any letters from Mr. Clere or Mr. Smith objecting to these interest payments on these notes or any question in reference to them. These interest payments were made by checks drawn on this account in question. The checks show themselves [48] how they were signed. As long as the Clere Clothing Company's account was with the bank a statement was made at the last day of each month, and as far as I know, those statements all show that the account was carried in the name of the Clere Clothing Company, the only account that I know of. I could not say whether those monthly statements were delivered to Louis Schlessinger too, or to the Praeger-Schlessinger Company at 111 Howard Street. I couldn't answer whether there are checks signed by Gilmore & Company or drawn while Gilmore was here. I have checked these statements for June and July and find that no checks were drawn while Mr. Gilmore was here and only checks drawn on the Clere Clothing Company account were drawn by Mr. Schlessinger, to the best of my recollection.

[Testimony of T. T. Grant, for Trustee.]

T. T. GRANT, called as a witness by the trustee, testified as follows:

My name is T. T. Grant; I am an attorney at law and reside in Spokane. I represented a number of creditors in the original bankruptcy proceedings of the Praeger-Schlessinger Company—I don't remember just how many now. I don't recall any par-

(Testimony of T. T. Grant.)

particular conversations with Mr. Smith as the secretary of the Clere Clothing Company in reference to the composition, about how the matter was to be handled after composition. I had an understanding with Mr. Smith as to what was to be done. I don't remember whether it was through a direct conversation with Mr. Smith or through a discussion in our office between Mr. Smith and the other members of the firm or not. I had conversations with Mr. Smith; I don't remember any of the conversations I had. It was my understanding that the Clere Clothing Company was taking over the Praeger-Schlessinger business and operating it, but I don't recall any particular conversations with Mr. Smith. He was in the office there a number of times. The dividend checks of a [49] number of creditors of the Praeger-Schlessinger Company were turned over to the creditors and some of them were turned back to Mr. Smith—I think Mr. Smith or Mr. Belden—I am not sure which. I think the check to James J. Murphy for \$89.21 was turned back to Mr. Smith—the endorsement would probably show. I think I endorsed some of these checks back directly to Mr. Smith, but perhaps I didn't. My recollection is that all these were turned back to Mr. Smith with exception of one payable to Burcham M. Ball and that was paid back to Mr. Belden for the purpose of turning it over to Mr. Smith I think, who was representing the Clere Clothing Company. Mr. Belden was representing the Clere Clothing Company at that time. That is how I happened to turn it over to him; that was sub-

(Testimony of T. T. Grant.)

sequent to the time I got the first checks if I recall. That check was held up for some reason or other and Smith had gone before that check was turned over to me, and I turned it back to Mr. Belden.

(Said papers were marked Trustee's Exhibits 9-10-11-12-13-14 and 15 respectively.)

[Testimony of Joseph Bailey, for Trustee.]

JOSEPH BAILEY was called as a witness on behalf of the trustee and testified as follows:

My name is Joseph Bailey and I reside in Spokane, Washington, and am connected with the National Bank of Commerce and was connected with the National Bank of Commerce in the year 1912 in the capacity of Assistant Cashier. As such Assistant Cashier of said bank, I had charge of the Clere Clothing Company account and was instructed in reference to it. Well, at that time I was acting as teller, both paying and receiving teller, and when the account would be opened if there were any instructions given they would be given by the Cashier, Mr. Cook, or Mr. Child or Mr. March, whoever happened to open the account. I think Mr. Child opened the account of the Clere Clothing Company. I received my [50] instructions from Mr. Child who opened the account. The account was carried on the ledger as the Clere Clothing Company and the signature cards were taken; the signatures of Praeger-Schlessinger Company. We were advised that the deposits made by Praeger-Schlessinger Company were to be handled through the Clere Clothing Company account on our books. I was instructed to

(Testimony of Joseph Bailey.)

honor the checks of the Praeger-Schlessinger Company through that account and did so. That instruction was given me at the time those cards were taken on the account; that would be after the account was opened. I don't believe during the time this account was operating I received any checks drawn by anyone other than those executed by Mr. Schlessinger. I don't think there were any checks drawn by Mr. Gilmore or Mr. Levy representing Gilmore & Company. At all times from June, 1912, up to and including June, 1913, we carried the Clere Clothing Company account in the same manner, as the Clere Clothing Company, on the ledger and there was no changes made at all in the account other than checking the deposits. There was interest paid on the notes of the Clere Clothing Company through this account, but I don't remember up to what date payments were made through the account, but I remember at different times payments were made through the account. I don't remember how much interest was paid on those notes. I could not answer as to whether or not we received any interest from the Clere Clothing Company in the east up to June, 1913; the books wouldn't show it.

[Testimony of William A. Yoemans, for Trustee.]

WILLIAM A. YOEMANS, called as a witness by the Trustee, testified as follows:

My name is William A. Yoemans and I reside in Spokane and am Credit Manager for the Spokane Dry Goods Company and was such Credit Manager in the year 1912 and as such Credit Manager [51]

(Testimony of William A. Yoemans.)

had something to do with the account of goods sold to the Clere Clothing Company during the year 1912. It was about May or June, 1912, when we opened the account. I made investigation as to the account, that is as to how it was to be operated and how the concerns were to be conducted. Mr. Schlessinger came up to my office and asked to open an account in the name of Praeger-Schlessinger and we refused to sell him. Mr. Schlessinger advised me that the stock at that time was owned by the Clere Clothing Company except one share held by Mr. Newton and one share by himself. I advised him I would not sell anyone except the Clere Clothing Company owners of the business, and he finally consented and opened the account that way. We handled it at all times as the Clere Clothing Company and from time to time goods were put in the name of the Clere Clothing Company and up to June or July, 1913, the time of the receivership, these goods were delivered at 111 Howard Street, the place where the Praeger-Schlessinger Company's business was being conducted. At the suggestion of Mr. Schlessinger I made enquiry of the bank in reference to that Clere Clothing Company business. I went to the bank and talked to Mr. Child and he advised me that Mr. Smith of the Clere Clothing Company had made arrangements with them for handling an account there to cover this business being run at 111 Howard Street and they were running the business and that the accounts would be taken care of.

Q. Did you, Mr. Yoemans, ever receive a letter or

(Testimony of William A. Yoemans.)

see a letter from the Clere Clothing Company in reference to the Spokane Dry Goods Company account in which they admitted their liability?

A. Yes, sir.

Mr. BELDON.—Now, I move to strike that and I want to put in an objection. He says whether he saw a letter or received a letter in which they admitted their liability. That is improper; the letter speaks for itself. Let them produce the letter.

The REFEREE.—Of course, the letter is the best evidence; no [52] doubt about that.

Mr. WITHERSPOON.—Have you that letter?

A. No, sir.

Q. When was it you saw it?

A. Well, I beg your pardon; if you ask me if I saw the letter I did not see the letter.

Q. Well, I understood you to say that you saw the letter. A. No, sir.

Q. Was it read to you?

A. No, sir, it was quoted to me.

Q. It was quoted to you? A. Yes, sir.

Q. Did you never have the letter in your possession?

A. No, I never had the letter. The Spokane Dry Goods Company, through the Merchants' Association, sued the Clere Clothing Company and got judgment on its account. During the time this account was run at the Spokane Dry Goods Company part of the indebtedness was paid. The first check issued to us was signed the Clere Clothing Company by L.

(Testimony of William A. Yoemans.)

A. Schlessinger; the balance were paid by checks signed Praeger-Schlessinger by L. A. Schlessinger.

[Testimony of Fred Stoltz, for Trustee.]

FRED STOLTZ was called as a witness by the Trustee and testified as follows:

At present I reside at Careywood, Idaho, and was the Trustee in Bankruptcy of Praeger-Schlessinger, bankrupt in which a composition was made in 1912. As Trustee of the Praeger-Schlessinger Company, bankrupt, I received no moneys or funds other than those shown by the orders of the Court on file in Case 1343. No other moneys were received to my knowledge other than those sums by the Praeger-Schlessinger Company while I was Trustee in Bankruptcy. Those funds were deposited in Judge Rudkin's name and an order issued by him directing me to draw on that account, checks of course in the usual course subject to be countersigned by the referee. The approximate amount of the fund was to about \$21,500. There was no such an amount as \$26,000 received [53] or checked out. No money was received by me as trustee in addition to the \$21,500 approximately.

[Testimony of Edwin T. Coman, for Trustee.]

EDWIN T. COMAN, called as a witness on behalf of the trustee, testified as follows:

My name is Edwin T. Coman, residence, Spokane, Washington. I am President of the Exchange National Bank of Spokane and was such President in the month of April, May and June, 1912. The Exchange National Bank had a claim against the

(Testimony of Edwin T. Coman.)

Praeger-Schlessinger Company in the former bankruptcy proceedings in 1912. I know how much the Exchange National Bank received on its claim. We received \$4,272.21 in the bankruptcy proceedings. As to whether we received any further amount we sold our collaterals and claim against the Praeger-Schlessinger Company for \$4,272.21. These collaterals were put up by the Praeger-Schlessinger Company. These collaterals were the personal guarantee of Praeger and Schlessinger and—well, there were three or four parties to the guarantee and the guarantee of the Praeger Company which controls certain mining interests in the Coeur d'Alenes; also a note of \$2,000.00 of Clara Praeger secured by a mortgage on her home on Cannon Hill. I don't know that it is a fact that at the time we filed our claim in the Bankruptcy Court and before it was allowed we waived our call on that collateral security. I think Mr. Hindman of Cullen, Lee & Hindman represented our claim at the former bankruptcy proceedings and the Exchange National Bank filed its claim in the former bankruptcy proceedings. At the time we filed our claim in the former proceedings, we had this collateral above referred to which we sold for \$4,272.00, and I don't know whether he prepared—as to whether or not we had any instrument in writing from the parties who gave us the collateral authorizing us to sell it; this matter was handled by Mr. Hindman and I don't [54] know whether he prepared any such instrument or whether there was any—I don't remember.

(Testimony of Edwin T. Coman.)

Q. Now, the claim that was filed in the bankruptcy proceeding for the Exchange National Bank for \$16,250.00, among other things says: "That said claimant has not, nor has any person by his order or to the knowledge or belief of said deponent, for claimant's use, had or received any manner of security for said debt whatever." Now, was that correct at that time or was it not, Mr. Coman?

A. What time was that?

Q. At the time the claim was filed in the Bankruptcy Court on the 24th of April, 1914.

A. That is the 24th of April, 1912; I am inclined to think that we had that mortgage and we had that guaranty and the endorsements of these different parties. The additional amount that we got was \$4,272.21 making a total of \$8,544.41 and I should judge from the fact that these figures are approximately the same, that was 25% in addition to what we received from the Trustee in Bankruptcy—25% of that claim in addition to what we received from the Trustee in Bankruptcy. We received it about the time we received the other. The additional amount of \$4,272.20, or whatever it was, was credited on the bank's books either to the notes or profit and loss account. I don't remember whether this had been charged off or not. That was credited to the \$16,000 of notes, copies of which we filed in the original proceedings and this collateral that I have referred to we had paid nothing for. It was merely collateral for the notes that we filed in the bankruptcy proceedings. The only interest we had in

(Testimony of Edwin T. Coman.)

them was as collateral to those notes that were filed in the original bankruptcy proceeding. In dealing with reference to the additional \$4,200.00 I dealt with a representative of the Clere Clothing Company, Thomas K. Smith. I don't know that I knew he [55] was secretary; I thought he was an attorney out here. I think the first conversation I had with him in reference to the additional \$4,272.00 was prior to the 8th day of June; I couldn't remember whether it was in May or April. Mr. Smith was here for a considerable time and I saw him a number of different times. I couldn't remember the date after a lapse of two years.

Q. You don't remember the date of the composition? A. No.

Q. The order confirming the composition was May 16th, 1912?

A. That was about three weeks before this was paid.

Q. Do you remember having some conversation with Mr. Smith prior to that time, about the 12th of May, a few days before, with reference to the composition?

A. Why, it would be impossible after this lapse of time to say on the 12th of May or the 20th of May.

Q. Well, a few days prior to that time?

A. I couldn't say. I don't remember by what individual this security was brought in, but the guaranty was signed by—I don't know whether it was signed by anyone outside of the stockholders in the corporation or not. The guaranty was brought in

(Testimony of Edwin T. Coman.)

by Mrs. Praeger and the Praeger Company was a corporation supposed to be engaged in the mining business in Idaho and to have some mining claims. If it is a fact that Mrs. Praeger's \$2,000.00 mortgage that you refer to was surrendered up in the Bankruptcy Court at the time that your claim was allowed and turned over to Mrs. Praeger in the courtroom, I don't recollect it. It might have been done or the attorney might have done it and I would not know about it; I don't remember. As to having anything to do with the filing of our former claim and attendance in court as a witness, I was in court once I remember. That wasn't the time that Mr. Belden was objecting to the allowance of the claim of the bank. I think he was objecting to the allowance of our claim at that time. If at that time I surrendered up all the collateral that we had and agreed to surrender the collateral [56] so that our claim should be filed, I don't remember it. I did whatever my counsel advised me to do. I turned over all that I had left then. If that \$2,000.00 mortgage wasn't in the papers turned over to Mr. Smith, why then I didn't turn it over, but I supposed—

Q. Now, do you know what you did turn over to Mr. Smith or do you know that you turned anything over to Mr. Smith?

A. Oh, yes. I don't seem to have any memorandum of it here but I did turn over to Mr. Smith a financial statement of the Praeger-Schlessinger Company in addition to the documents. I turned over this guaranty to these outside parties; that was

(Testimony of Edwin T. Coman.)

our regular form of guaranty for a corporation that the bank usually has. There were four or five parties to it, there was M. Praeger and L. Praeger and Schlessinger, and I think there were one or two more; supposed to be all the people connected with the concern, to get their personal endorsement—personal guaranty. I think that I turned over this \$2,000.00 note but if I had turned it in previously, of course, I couldn't have done so. Outside of that \$2,000.00 note, I would what I referred to as collateral was the guaranty of these stockholders—I consider that a guaranty. It is the general guaranty of all obligations that might be due to the bank. If the parties were good it was valuable. I wasn't sure about whether any of them was good at that time. The mine was supposed to be in the name of M. Praeger, I believe, M. Praeger Company, we had their endorsement also. It wasn't signed on that guaranty; it was on a separate endorsement or guaranty. I think they endorsed each note of the Praeger-Schlessinger Company as it came up. It shows on the copy—on the notes there that we filed.

Q. Now, then, as far as you can recollect, all that you turned over to Mr. Smith for this \$4,272 were these papers; that is this guaranty and the financial statement of Praeger-Schlessinger [57] made by Praeger; is that all?

A. Well, I am still of the opinion that I turned over that \$2,000.00 note; though, of course, if it was turned over in the Court I could not have done so. If the record shows that it was turned over in court

(Testimony of Edwin T. Coman.)

then I would be mistaken on that. With reference to turning over these guaranties, I had numerous conversations with Mr. Smith in reference to turning over these guaranties. He was out here perhaps a month or two months; he was out here about the time the Praeger-Schlessinger Company failed or very shortly afterwards, and I had conversations with him in reference to our notes. It is hard to say what my first conversation was with Mr. Smith in reference to a composition. I couldn't say when the conversation was. At the time this proposed composition came up, or proposition for composition, we were opposed to it and instructed our attorney to resist it.

Q. But you were resisting it until about the 20th or 22nd of May; was that correct?

A. Well, I don't know when my resistance ceased; that account was signed on the 27th of May. I assumed that they agreed to the composition on that date and ceased our opposition. I had some agreement with Mr. Smith in reference to that—to our ceasing to object to the composition. I could not tell the conversation after such a lapse of time, but we acceded to the composition and Mr. Smith was to buy our claim and our collateral, particularly this statement that they were anxious to get—this financial statement.

Q. And was the agreement that you were to give anything in addition to the 25%?

A. He agreed to pay us this money that he did pay. I don't remember whether he did at that time

(Testimony of Edwin T. Coman.)

give me a cashier's check of the Bank of Commerce to guarantee that. The record shows that we got it on the 8th of June.

Q. It was paid on that day, but isn't it a fact that some time about the 22d of May, between that and the 27th, that this [58] check was turned over to you to hold subject to this composition? Mr. Coman, isn't it a fact that prior to the time you signed that petition and consented to the composition that Mr. Smith turned over to you a cashier's check of the Bank of Commerce for \$4270 some odd dollars?

A. I don't remember whether that was the way it was settled or not. There must be some record that would show. I don't think I have any record. I have all the records of the bank in reference to that. I have a copy of our ledger sheet and a copy of the account of Praeger-Schlessinger Company and a copy of the account in the liability ledger showing the amount of their indebtedness. This envelope has that collateral record. I have no notations there showing that it was turned over to us about May 21, 1912. I have no notation there showing when it was turned over; if it was turned over on that date, I don't remember. I haven't any recollection as to its being turned over prior to the time that we got our check from the trustee. It might have been and it might not have been.

Q. Did you have any written authority from the Praegers or from anyone else to turn over these papers to the Clere Clothing Company?

(Testimony of Edwin T. Coman.)

A. Well, now, if I had such written authority, it ought to be here. Its not being here leads me to think I didn't have written authority, but that was handled by our attorney—I couldn't say.

Q. Mr. Coman, isn't it a fact that at the time at which you made an agreement with Mr. Smith of the Clere Clothing Company for this additional \$4270 some odd odllars, that immediately after that your attorney withdrew from the case and that you handled it yourself subsequent to that time? Mr. Hindman withdrew from the case.

A. Subsequent to the time this payment was made?

Q. No, prior to the time that payment was made and subsequent to the time this arrangement was made with Mr. Clere for this additional \$4272. [59]

A. Well, I think that Mr. Hindman did resign from the case in a measure; Mr. Hindman had started in on one theory of the case and when we didn't instruct him to go ahead and carry out that policy, why he ceased to direct that part of the case.

Q. And you handled it yourself, isn't that a fact, from that time on?

A. I presume I handled it, but Mr. Hindman still maintained his relations as attorney for the bank.

Q. But not in this case. Isn't that a fact, that he withdrew?

A. I don't know whether—we differed as to the handling of the case and whether he severed his connection or not—

Q. I am not asking you that; you stated a while ago that this matter was handled by yourself and Mr.

(Testimony of Edwin T. Coman.)

Hindman; I am asking you if it isn't a fact that right after you agreed with Mr. Smith of the Clere Clothing Company to this composition on paying you this additional \$4272—isn't it a fact that Mr. Hindman withdrew from this case and that you handled the matter from that time on?

A. I don't know what construction to put on a resigning from the case. From whatever time we had this difference I handled most of the case. If there was any agreement in writing from the Praegers or Prager-Schlessinger, I don't remember—I don't recollect because I don't find it here. If there was a writing I expect I would have it. Our only arrangement was with Mr. Smith for the Clere Clothing Company.

[Testimony of Henry R. Newton, for Trustee.]

HENRY R. NEWTON, called as a witness on behalf of the trustee, testified as follows:

I am employed by Belden & Losey who were attorneys for the Clere Clothing Company. I think we filed proof in bankruptcy for them about June, 1912. I think we represented them since that time. The first by whom I was employed represented the Clere Clothing Company, I think, in all matters in which they had any business in Spokane. [60]

Q. As such representative you acted as one of the trustees did you not, of the Praeger-Schlessinger Company?

A. No, sir, I did not. I didn't act as a representative of the Clere Clothing Company. I was secretary of the Praeger-Schlessinger Company after the 12th

(Testimony of Henry R. Newton.)

of May, 1912,—I think it was the 12th of May. I turned over all records to the Union Trust & Savings Bank, the Trustee in Bankruptcy. I haven't any of the minutes; I turned over all minutes that I had to the Union Trust & Savings Bank. As to whether or not there were any other minutes than those turned over, I will say I am not sure what was turned over, but I turned over all I had. There were some minutes of the Praeger-Schlessinger Company that were turned over to Louis Schlessinger. He came up to the office and wanted to borrow them a few days before he applied to the Superior Court for a Receiver, and he asked to borrow them to look at them, and those were not returned and I don't know what became of them. At the time I was appointed secretary of the Praeger-Schlessinger Company, one certificate of stock was issued to me. It may have been July 3d, 1912, that I was appointed, instead of May, and from that time up to the time of the bankruptcy proceedings, I acted as secretary of the Praeger-Schlessinger Company. Louis Schlessinger held one share and T. H. Clere held the balance. Mr. Clere is a gentleman residing at Syracuse, New York, also President of the Clere Clothing Company as I am informed, and he represented himself to be the President of the Clere Clothing Company. Mr. Clere was present at the meetings of the Praeger-Schlessinger Company held subsequent to July, 1912, and voted all the stock he had at the stockholders' meeting that was outstanding in his name—I think 498 shares. The certificate of stock that stood in my

(Testimony of Henry R. Newton.)

name didn't belong to the Clere Clothing Company; it belonged to the former stockholders L. Praeger and S. S. Praeger and Clara Praeger and that bunch.

[61] It was a fact that the former stockholders surrendered up their stock and the stock was cancelled and it was re-issued to myself and Mr. Clere and Mr. Schlessinger. Schlessinger had one share and it was surrendered up under an agreement by which we held it in trust for these former stockholders; the agreement was oral. We had no written agreement.

Q. At the time of the meeting of the stockholders in July, 1913, in which there was a resolution passed to put the Praeger-Schlessinger Company in bankruptcy, isn't it a fact that Mr. Schlessinger wasn't present and Mr. Clere and yourself voted a resolution?

A. There were two meetings, Mr. Witherspoon, in July; at one meeting Mr. Schlessinger wasn't present and at the other meeting he was present.

Q. I am asking you if it isn't true that at the meeting of the stockholders in July, 1913, that resolution was passed to file a petition in bankruptcy, at which Mr. Schlessinger wasn't present?

A. Well, if you will show me the meeting and give me the date of it, I can tell you possibly.

Q. I hand you what purports to be the minutes of the meeting. (Handing same to witness.)

A. Apparently Mr. Schlessinger wasn't present at that meeting. I didn't represent the Clere Clothing Company at the time of the settlement of the composition; Belden & Losey and myself did. At the time

(Testimony of Henry R. Newton.)

the stock was turned over to me I didn't know whether or not there was any moneys put in the business; actual cash moneys put in the Praeger-Schlessinger Company's business, and so far as I know there was no subscription list issued at that time. As to whether or not there were any moneys put in the business of any kind, character or description, from the time of the composition in bankruptcy up to and including July 23, 1913, other than from the sale of merchandise, I couldn't say. I was secretary, but I didn't have anything to do with the [62] active management of the store. The only times I had anything to do with it was at the meetings of the stockholders or the trustees. I didn't know anything about the books of the company; that is, anything except the stock book and the minutes—that is all I kept, the rest of them were kept by Mr. Schlessinger. I know they kept a set of books, but I didn't know anything about the ledger, cash-book or journal of the company. I think I could identify the books if I saw them. That is apparently one of the books that was kept by the Praeger-Schlessinger Company. The only one I have seen very much of is the ledger. I believe that is the ledger and those are the cash-books. Those books look though they might be the books of the company. They have the names of certain people with whom Praeger-Schlessinger did business, and look like they might be their books. I think that is the ledger; I am sure of it. I couldn't say whether or not I still have my share of stock in the Praeger-Schlessinger Company. It seems to me that all that

(Testimony of Henry R. Newton.)

stock was turned over to the Trustee in Bankruptcy; I am not sure. I think all the stock was turned over to the Trustee in Bankruptcy—I wouldn't be absolutely sure of it,—I mean to the Union Trust & Savings Bank. Some young fellow came up there with an order from the bank to deliver it to him. I think his name was Smith, and I turned over to him certificates 1 to 20, all the stock amounting to 500 shares of the stock of the Praeger-Schlessinger Company. Apparently there were no other certificates. Apparently it is a fact that these certificates that were issued July 3, 1912, were certificates 21, 22 and 23, and I believe it is correct that those were not turned over. I don't know whether I have the certificates in my possession. I was under the impression that I turned them over. They may be up in the office. I don't think that I have the certificates standing in the name of Clere in my possession. I don't know whether [63] Belden & Losey have them or not. I don't think that they have though. I think that Clere had the certificates standing in his name. Mr. Clere was out here twice or three times possibly, after he was appointed an officer or director of the Praeger-Schlessinger Company. I say he was out here in July, 1912. I think he was not out here in December, 1912. He was here the 25th of January, 1913, I know. He was out here just about the time this last petition in bankruptcy was filed. I think that is all the times he was here. He attended at all times when he was here when the meetings of the Praeger-Schlessinger Company were held, and voted.

(Testimony of Henry R. Newton.)

Cross-examination.

The minutes of the meeting of January 25th, 1913, were turned over to Louis Schlessinger. He came up to the office a day or two before the suit was filed in the Superior Court appointing a Receiver, and he said he wanted to look at them. At that time I supposed he just wanted to look at them, so I loaned them to him and that is the last I ever saw of them. Mr. Schlessinger, Mr. Clere, myself and Mr. Belden were present at that meeting of January 25th. At that meeting the Praeger-Schlessinger Company presented to the meeting an invoice and inventory of all merchandise in the Praeger-Schlessinger Company's place of business, including an invoice of merchandise belonging to the Clere Clothing Company held by them on consignment. Mr. Schlessinger said he wanted to show the—Mr. Witherspoon called attention to the meeting of July 8th, 1913, at which Mr. Schlessinger wasn't present, a meeting held by myself and Mr. Clere at which a resolution was offered that the corporation was insolvent,—yes, that the corporation was insolvent. At a subsequent meeting held on the 30th day of July, 1913, at which Mr. Clere, Mr. Schlessinger and myself were all present, a resolution was adopted, substantially [64] the same as the resolution adopted on the 8th of July, and the proceedings on the 8th day of July were ratified and approved by the entire Board of Trustees. (Minutes referred to marked "Trustee's Exhibit 16.")

[Testimony of Richard W. Nuzum, for Trustee.]

RICHARD W. NUZUM, called as a witness by the Trustee, testified as follows:

I am a practicing attorney at Spokane, of the firm of Nuzum, Clark & Nuzum. I am acquainted with T. H. Clere of the Clere Clothing Company. On or about June or July, 1913, I had a conversation with Mr. Clere in reference to the Clere Clothing Company's interest in the Praeger-Schlessinger Company, when he was here in the summer at the time the Praeger-Schlessinger suit was commenced in the Superior Court and the receiver was appointed; whether it was June or July I couldn't say; that was the only time I had conversations with him at that time. The principal conversation related to the one I remember most about was in Mr. Belden's office, to see if we couldn't get together on some settlement. Schlessinger had said that Clere wanted to meet me with him, and when I went up there Clere asked what I was there for. Mr. Belden was in the room and I told him what Schlessinger had said and we went on—I think I had Schlessinger make a statement of what he contended was due the Clere Clothing Company from Praeger-Schlessinger and from that we talked as to how much was involved in the indebtedness claimed and actually due. At that time I had some statements that Schlessinger had gotten up and some others. I remember one distinctly, in Schlessinger's own writing, that I read from. The statement you hand me here don't appear to be marked anything. I had that. Better have it marked so

(Testimony of Richard W. Nuzum.)

that it can be identified. I had this one in my possession—my recollection [65] is I had all of these, but whether I read all of them to Clere, I wouldn't say—I know one of them I did, the first one. I said I knew that I read from this and I had all these others in my possession. The transaction we were entering into particularly was the amount of money and merchandise that really went into that note, Schlessinger claiming that the note was for an amount largely in excess of the real consideration. I interrogated Mr. Clere with reference to this sheet No. 4 with reference to the amount shown there as the amount of the inventory. Clere had claimed in that conversation or one other in which he was down in my office, that the note represented the amount of the inventory. The note was for thirty thousand and some odd dollars. The amount of the inventory is given there, and as I remember from the inventory it was more—\$27,000 and something. The amount of the inventory was \$27,254.40 as I stated it to Clere and I had this other at that time because Clere laughed at 33 1/3 % being thrown off. I said to Clere, "How do you reconcile the fact that you claim you gave this note for the amount of the stock on hand when the inventory is only \$27,000, and the note is thirty thousand some hundred." He said a man could give anything he wanted for a stock of goods, words in substance to that effect. That was the answer he gave me. That conversation was in Belden's office. There was present Mr. Schlessinger, Mr. Belden and myself and Clere. He did not state that

(Testimony of Richard W. Nuzum.)

the total inventory wasn't \$27,000 or that it was in excess of it. The only time I ever heard that the inventory was any different from that, was in Mr. Clere's testimony in Syracuse when I took his deposition. The inventory was in my office and I have seen it. I thought it was given to Schlessinger—I know it was given to Schlessinger after they got through with the Superior Court case. Belden & Losey asked me for it. I didn't give it to Schlessinger but I know it was given to Schlessinger by the office. I know Schlessinger took it. I didn't add up [66] the inventory, but \$27,254.40 was the amount that the footing showed, and Mr. Schlessinger made that statement. That was the total inventory of the stock.

(Said papers were marked Trustee's Exhibits 17 and 18 for identification.)

Q. Referring to Trustee's Exhibit No. 17 for identification, I will ask you to state if you talked to Mr. Clere with reference to that note,—the \$30,000 note which they had and which Mr. Clere stated that was made up of the items that they had paid out in the former bankruptcy proceedings including the payments to the Exchange National Bank, etc.

A. Well, I read from this list here. I had this same paper and said to him that Schlessinger claimed that these were the amounts going into that note; the only amount that he disputed was Belden & Losey, \$250.00, Belden claiming he never had gotten that, and assured me and Clere and everybody else that this fee was or would be more than that in the

(Testimony of Richard W. Nuzum.)

matter, and claiming that he never had paid him that, and they laughed about that a good deal; then Clere spoke up and said, "Yes, I think Smith's amount was \$1,890." He said, "I suppose Smith was here about 6 weeks and he ought to give that back." I said, "Mr. Clere, I am not going into the reasonableness or unreasonableness of this business." He said, the Belden and Losey account was incorrect; that was the only one he corrected. I don't think at that time he said anything as to the creditors in the original bankruptcy proceedings paying over to the Clere Clothing Company a certain amount. I had a conversation with Mr. Smith in reference to the matter. After taking the deposition at Syracuse I said to Mr. Smith, "What became of this money that Mrs. Praeger and Crystal and a number of the creditors who were allowed money?" I said, "That was turned back." He said, "That was applied on the note; that Clere knew nothing about that; that he, Smith, was out here and turned it into the Bank of Commerce on the note that was given to raise money to make a composition. Smith was the [67] attorney for the company, and the secretary.

Q. Did you know what the amount was? Did he state the amount, or do you remember it?

A. I don't remember the amount, but there was Mrs. Praeger's and there was Crystal's and there was the one that Frank Allen represented, a woman by the name of Manley. I would not be sure about McDowell; it was the preferred creditors that were

(Testimony of Richard W. Nuzum.)

given this money. The checks would show very plainly. The receivership had the checks; they were all turned in. As I understood, originally, the checks were turned into the bank, and they ought to show the bank's endorsement. I don't remember having had a conversation with Mr. Clere or Mr. Smith on behalf of the Clere Clothing Company with reference to the payment of \$4,272.20 to the Exchange National Bank. I only saw Smith in Syracuse. I don't remember whether we spoke about the Exchange Bank matter. With Clere, I did, as to the \$4,272.20 paid. Now, at one conversation—whether it was in Belden & Losey's office, or in our office—the suggestion was made either by Mr. Smith or Mr. Clere; Losey was in our office; I don't think Mr. Belden was down in our office at that time. He was in his office and Losey came in part of the time. As to how this money was to be paid, now somebody said, either Losey or Clere, that—they were both there—talking about the matter; I don't know which one did the talking; they were in the room talking about it.

Q. How did Mr. Losey happen to be in the room and talking about it?

A. Talking for the Clere Clothing Company the litigation was against. Well, they were appearing for the defendants in the case that Praeger and his wife had brought for damages. I don't remember whether it was against the Clere Clothing Company or against Clere. I don't remember which one it was, but Clere was there with Losey. On the ques-

(Testimony of Richard W. Nuzum.)

tion of how this \$4,272, came to be paid to the Exchange Bank, I claiming it as a preference which they had no right to pay. Now, one of the others said—I can't [68] give the exact words—that in consideration of that or for that money, certain papers were relinquished by the bank, that would have incriminated Mr. Praeger. I said, "Do you imagine that the bank or Mr. Coman or anybody else is going to admit or claim that they gave up papers that would send a man to the penitentiary and compounded a felony for \$4,272, or any other sum? They can't and won't take that position." That is all they said about it. I don't know whether or not that paper that you referred to or that you say they referred to was a financial statement of Praeger's or the Praeger-Schlessinger. I judged that it was the statements—sworn statements that old man Praeger had given to the bank to get credit; that is what I thought they meant; and that to get those, the bank had been given money to turn over to them. They didn't say what papers.

Q. You say "they." Whom do you refer to?

A. Well, whoever gave the money to the bank.

Q. Who made that statement; myself or Mr. Clere?

A. I said it was in my office. You were not in the office at that time. I couldn't say whether it was Mr. Losey or Mr. Clere that made that statement; it was either he or Mr. Clere; it was a conversation in which everybody was taking part. The reason that I remember it so distinctly was that anybody should take the position that the bank or any-

(Testimony of Richard W. Nuzum.)

one else would admit that they had given papers up for money to compound a felony, which it would have been if they had taken that position. I read all the items in Trustee's Exhibit No. 17 to Mr. Clere. I read to him the items showing merchandise from April 17th to May 28th, 1912—\$21,257.90. The only item he disputed was the Belden & Losey item of \$250.00 and both he and Mr. Belden said that wasn't correct, and Mr. Schlessinger said to Mr. Clere, "I took this from the slip that you had. Have you got the slip now?" and Mr. Clere said he hadn't the slip, but if you will remember I examined him about [69] the slip in Syracuse, New York; he admitted that the slip that he had was practically the same except the Belden & Losey money. As I said, he didn't dispute any of them except the Belden & Losey item. As for him giving a categorical answer saying, "Yes, that is correct, and this is correct," he didn't do that. The only one he raised objection to was on the Belden & Losey item and he made a comment on the Smith item, sort of sarcastically, saying, "Of course, he being away from his office six weeks, he isn't entitled to anything, and he ought to turn the money back." Mr. Clere didn't make any comment on the invoice of \$27,250.40. His answer to me was when I asked him, "How did it come when they gave you a note for thirty thousand some odd dollars and the invoice is only for that amount (indicating), how do you reconcile that?" His answer was, "You could give as much as you wanted to for a stock of goods." There never was any question

(Testimony of Richard W. Nuzum.)

about that inventory until in his testimony in Syracuse he swore that the inventory was the exact amount of the note and the items that the Clere Clothing Company had paid out including the money to the Exchange Bank and their expenses and the money that they had shipped and the money to pay the Praeger-Schlessinger Company also, were the exact amount of the note. That was his testimony at that time. He stated that under oath, sir, and if the testimony is correctly transcribed, it is there. I read to Mr. Clere the item where it says, amount of Clere claim in full. He got the other fellows' claims settled on the basis of 25 cents on the dollar, and in this note \$4,736 was added to it in order to get Clere his money in full. In other words, while apparently he took the composition, he didn't take it. This \$4,736 was included in the \$30,000 odd dollars and Mr. Clere told me it was included in the note at maturity. He didn't dispute it. I didn't have any other conversations or talk with Mr. Clere or Mr. [70] Smith on the subject of this controversy that I have been testifying about, more than I think I have talked to them; just simply told them that Praeger and wife had told me to dismiss the case. That is, Clere, not Smith. I never saw Smith until in Syracuse. If Smith was here in July when the trouble was on, I didn't see him. I met him in Syracuse on the 12th of January. I was introduced to him by Mr. Clere in the office of the Commissioner where the depositions were taken. That is the first time I had ever seen Smith. I have no recollection

(Testimony of Richard W. Nuzum.)

of having had any conversations with Clere in reference to the Clere Clothing Company running this business of the Praeger-Schlessinger Company. It seems to me that was in the deposition. I don't think there was any conversation on that, but I examined about that; but I would not have any recollection of any conversation; any distinct recollection. As to conversations with Mr. Clere in reference to the Praeger-Schlessinger Company making payments on the notes of the Clere Clothing Company at the Bank of Commerce, I am with that like I am with the other. That question came up but whether it was when I took the deposition or whether it was a conversation, I wouldn't declare. I know there were payments made by the Praeger-Schlessinger Company on that note. I don't know whether I talked with Clere about that or whether in his testimony something was said about that. It seems to me there was either one or the other.

(Said papers were marked respectively "Trustee's Exhibits 17 and 18.")

Cross-examination.

At the time I had this conversation in the office of Belden & Losey I came up there with Schlessinger; I was attorney for Schlessinger as well as for the Pragers, the old gentleman and lady. I was attorney for S. S. Praeger and Clara Praeger, [71] his wife. My recollection is that I brought suit in the Superior Court of Spokane County to recover the sum of about \$15,000 for stock which they claimed was held in trust by Clere for them, but the papers

(Testimony of Richard W. Nuzum.)

in the case would be the best evidence. I filed papers in the Superior Court. I wouldn't be sure about whether that suit was not dismissed with prejudice out of court before I filed my complaint. There was one case in which White was appointed receiver. The other case; Mr. Belden has a copy of that case that we served on Clere, and for me to state the contents of that complaint or the object of that suit without looking at it, I wouldn't want to do. There was a receiver appointed in the Superior Court for the Praeger-Schlessinger Company; I would not be sure in which suit he was appointed, but the one in which Johnny White was appointed receiver. I think it is the case where S. S. Praeger and Clara Praeger are plaintiffs; that is my recollection.

Q. I will ask you if it isn't a fact that in that suit in which S. S. Praeger and Clara Praeger were plaintiffs and the Praeger-Schlessinger Company were defendants, that the defendant paid you an attorney's fee of \$100.00 out of the assets of the corporation?

A. I did get \$100.00 but I couldn't tell you where it came from. We got \$100.00 from this transaction. I told you I went up there to talk with these men to settle this lawsuit. The object of the suit, if you will read the papers, is to protect it from paying your notes and prevent it from being wrecked as you subsequently proceeded to do. You were paid up, so Mr. Belden told me; got your claims at 100 cents on the dollar and put it in the bank.

(Testimony of Richard W. Nuzum.)

That is in answer to your insinuation we were trying to wreck it, when the truth is you are the men who subsequently did wreck it. I don't know where that money came from. I know there was \$100.00 paid us and if it came from the [72] Praegers-Schlessinger Company, it will show on the books. Louis Schlessinger turned over to us the inventory—I don't remember the date—but he turned over the inventory to us which purported to be in the inventory taken about the time this note was executed. When we got the inventory it was just the same size that it was when it left us. I couldn't tell you how big that was. There were a good many sheets to it. I wouldn't say whether it was about 50 or 60 sheets or not. No judgment about that. It was a good sized inventory, such as you would expect where there was a stock consisting of lots of items; quite a volume of stock. It was an inventory that purported to show all the stock. I didn't examine the inventory in detail. I saw the footing of it. The total footing showed this \$27,000 because Praeger that off of it in making this statement so that he could talk to Clere. I don't remember how much merchandise the inventory showed that the Clere Clothing Company had there. I wanted to get the total inventory to show the amount of the note. I understood that this was all the merchandise of the Clere Clothing Company, because they claimed this note was the note for it. I couldn't tell you what the inventory showed. I know that it totaled \$27,540.90. Schlessinger got up some memoranda

(Testimony of Richard W. Nuzum.)

so that we could talk to Clere. That wasn't part of the inventory. The inventory showed lots of merchandise. I didn't go through it; I don't remember that it separated the fixtures from the merchandise. I hardly think that it showed other merchandise belonging in the Praeger-Schlessinger store besides what belonged to the Clere Clothing Company. He may have had that segregated, or he may have had it in these further sheets. As I told you, I didn't read it through or check it through carefully. What I wanted to get was the amount of the inventory. I couldn't tell whether this inventory showed the merchandise belonging to anybody else besides the Clere Clothing Company; I didn't check it through [73] page for page. It isn't a fact that the inventory showed there was \$30,640 worth of merchandise belonging to the Clere Clothing Company. This is the amount indicated; this is the total amount \$27,254.42. When I asked Mr. Clere to say whether this included the notes, he explained, as I have already stated, that you could give a note for anything you wanted to. I couldn't say whether or not that inventory showed that there was between five and six thousand dollars in the store belonging to other parties than the Clere Clothing Company and that was segregated from the Clere Clothing Company's stock. The inventory purported to show what merchandise these men took for that note. That is why it was taken. It was taken at the time the note was given. It was taken for the purpose of arriving at the amount of the note; that is apparently. It amounted

(Testimony of Richard W. Nuzum.)

to \$27,000 and something and the note, instead of being given for that amount, was given for the exact amount of the composition money, the money paid to the Exchange National Bank, and the balance to make up the full amount of the Clere Clothing Company's claim instead of 25 cents on the dollar and their expenses and Clere's expenses. That is not what Louis Schlessinger told me; that is what Mr. Clere admitted to me in his deposition. We had the inventory some days before the case was commenced. We were talking with Praeger and Schlessinger, I don't know how long before I commenced this suit. You have got a copy of the complaint; that will show the date and the verification of it. We got these papers maybe two or three weeks before this bankruptcy proceeding, and might have been a month before, because I talked with them quite a little about the details of it before I commenced this case. The inventory was given to Mr. Schlessinger. I never gave it to him; it was given to him by my brother or the young lady in the office. They took quite a few papers away when we dismissed old man Praeger's case. [74] It was given to him before the bankruptcy petition was filed because the bankruptcy proceeding was filed after we settled the litigation after we dismissed the case, and when we finished up with it we gave up his papers. We turned the inventory over to Mr. Schlessinger. I sent for old man Praeger and his wife and had them direct me in writing to dismiss the case and gave them the papers. I wasn't very

well pleased with the way the case wound up. At the time we gave this inventory to Schlessinger there was a receiver appointed for the Praeger-Schlessinger Company. I never thought about turning the inventory over to the receiver. Up to that time there never had been any dispute about the amount of the inventory. Never had been any question about the amount of the inventory and I never thought about turning it over to White or not turning it over to White.

[Stipulation Re Note and Mortgage of Clara Praeger to Praeger-Schlessinger Co., etc.]

It was here stipulated between counsel for the respective parties as follows:

It is agreed that the \$2,000.00 mortgage and note referred to in Mr. Coman's testimony the other day were the note and mortgage made by Clara Praeger to the Praeger-Schlessinger Company and the note was endorsed by the Praeger-Schlessinger Company to the Exchange National Bank as collateral security for \$2,000.00 note of February 6th, 1912, and that at the time of the filing of the claim of the Exchange National Bank in the original bankruptcy proceedings, said note and mortgage were surrendered up—it not being known who it was surrendered to; there seems to be a general mix-up from the testimony, but somebody got it—and that the Clara Praeger claim filed was reduced \$2,000.00 on account of the surrender of such note in the original bankruptcy proceedings. [75]

The claim was filed for \$9,000.00 and some odd dol-

lars and the defendant was paid on \$7,000 and some odd dollars.

(Letter from Thomas K. Smith to L. A. Schlesinger dated June 27th, 1913, offered in evidence and marked Trustee's Exhibit 19.)

[Testimony of Josiah Richards, for Trustee.]

JOSIAH RICHARDS was called as a witness by the trustee and testified as follows:

My name is Josiah Richards; my business is that of an Auditor and Accountant. I reside in Spokane and have been engaged in the auditing and accounting business a little over 5 years. (The qualification of Mr. Richards as an accountant was here admitted.) I have examined the books of the Praeger-Schlessinger Company, the bankrupt. I examined the general ledger, the journal, cash-book, check books, bank statements and the checks. The entries in these books commenced on June 3d, 1912. Answering your question as to whether or not I have examined these books to ascertain if there was any cash paid into the business from June 5th, 1912, or from the bankruptcy proceedings up to the present time, outside of moneys received from the sale of goods and merchandise, I will say I find on July 10th, 1912, an item of \$810.08 described as the Ball check and an item of \$101.00 on June 4th and an item of \$48.75 on June 4th, 1912. The item of \$101.00 is simply a cash entry; no description. Outside of these three items I don't find any other moneys put in the business of any kind, character or description from that time up to the time of the

(Testimony of Josiah Richards.)

second bankruptcy. The books were opened as of June 5, 1912, and were opened by capitalizing the merchandise at \$40,000, and capitalizing the fixtures at \$5,000 and capitalizing the accounts receivable at \$10,011.31. Those accounts receivable were old accounts receivable of the Praeger-Schlessinger Company. There was no statement in regard to what the merchandise was or any description of the furniture and [76] fixtures. There was no merchandise account open at that time in the general ledger. The merchandise account was opened, as appears from the general ledger, under date of July 27th, 1912. That shows as to merchandise, a balance of \$27,576.51 which balance is the difference between the \$40,000 at which the merchandise was capitalized on June 3d, plus merchandise purchased from June 3, to July 27th, less cash sales. The Clere Clothing Company account was opened on June 3d with a credit of \$100.00, cash payment by Clere Clothing Company to a Mr. Gilmore, and the next succeeding entry is a payment of \$14.75 to Mr. Belden, and then follows payments made by cash and by deposits in the Bank of Commerce for the credit of the Clere Clothing Company, which payments are charged to the account of the Clere Clothing Company. The Clere Clothing Company is given credit for goods shipped to the Praeger-Schlessinger Company if this is the Praeger-Schlessinger Company, for which they received credit, and their account is charged with sundry payments made on account of those goods beginning with the 5th of June and running

(Testimony of Josiah Richards.)

through July. The title of the account is the Clere Clothing Company consignment. As to what the credit side purports to show, as to when they received those goods, it purports to show that the entries were made under the dates running respectively from June 5th to July 8th, but that the goods were shipped from the Clere Clothing Company under the dates running from April 17th to June 3d to June 4th. The following were the items that were shipped during the month of April, 1912: Under date of April 18th, 1912, \$1530.00; April 20th, \$265.15; April 19th, \$1369.00; April 23d, \$824.00; April 29th, \$496.00. Those are the April consignments. In May I find the following consignments: May 20th, \$624.00; May 20th, \$887.75; May 20th, \$3,863.00; May 22, \$1,693.50; May 23, \$2,025; May 29th, \$1,299.00; May 22d, \$489.00; and May 28th, \$1,180.50. [77]

These goods were all charged in the books of the company subsequent to June 1st, but the entries show that they were shipped prior to that time. From my examination of these books, I do not find any note in the ledger or day-book or any bills payable in the ledger to the Clere Clothing Company for \$30,640.00 but there are other items and accounts in the ledger or journal other than the accounts I have referred to. With reference to the Clere Clothing Company, the Clere Clothing Company account running from August to January 3d, 1913, and another Clere Clothing Company account from February 4th to June 10th, 1913. As to your ques-

(Testimony of Josiah Richards.)

tion as to whether or not there was any change made in the books showing a change of management or change of conditions from June 1st, 1912, to June 10th, 1913, will say I find from June 3d to August 1st, that a Mr. Gilmore received a percentage of all goods sold. I find from August 1st to the closing of the books, that is the last entry in the books towards the latter part of July, 1913, that Mr. Gilmore receives no more payments on account of goods sold, nor does his name appear in the expense account, but salaries are paid to Praeger-Schlessinger. Schlessinger receives items that are charged to expense account that purport to be salary and also payments made to Praeger. The payment to Schlessinger is only a weekly payment. I can figure out what that is; \$50.00 is what it appears to be here to S. A. Schlessinger. His salary started in, I think, the first week in August—August 10th, and they continued the same up to the time in July that I testified to. That is the same amount of salary. Answering your question as to whether or not from my examination of these books I could say there was any change in the management at all or a change in the ownership of the business from the first week in August, 1912, up to July, 1913, I will say the books indicate that there was no change during the period from June 1st to the last entry in the [78] books in July, 1913; that is from June 1, 1912, the accounting entries. There was no inventory taken. There continue during the entire time. There are no closes no record of any bills payable in the books which

(Testimony of Josiah Richards.)

would indicate a sale. Every account continues during this period without having been closed. With reference to the account of the National Bank of Commerce, will say from June 1st to July 29th, 1912, the National Bank of Commerce is charged with certain deposits made in the bank. There do not appear to have been any checks issued against that account. On July 29th, checks were issued against the bank account under the name, that is checks signed Clere Clothing Company for a few days, 4 or 5 checks and thereafter Praeger-Schlessinger Company. Both of these checks are charged against this bank account. The books show on July 29th that there was a deposit of \$1000.00 and just after that there were these four or five checks drawn for just about \$1000.00 beginning with the 2d of August. The checks signed by the Clere Clothing Company, per L. A. Schlessinger, aggregate about \$1300.00. There wasn't another \$300.00 deposit about the same time as the \$1000.00. On the date the deposit was made, the date this \$1000.00 deposit was made, that appears as the first entry in this bank account giving a balance of \$1000. There isn't another deposit of about \$300.00 and the next deposit or item is August 5th—\$195.55. The dates of the checks signed by Clere Clothing Company run from July 31st to August 12th, 1912. From my examination of the bank statements it appears that the bank account was carried in identically the same manner at all times. I find an interest account. The interest account shows from August 9th, 1912, when the

(Testimony of Josiah Richards.)

first entry was made until June 2d, 1913, that there was interest paid monthly on an indebtedness to the National Bank of Commerce. The interest indicates that the payments were made on an indebtedness of \$7,500.00 and \$2,500.00. There is no account in the book showing that the Praeger-Schlessinger [79] Company was indebted to the National Bank of Commerce. Referring to the merchandise account, the entry in the ledger account under January 25th, 1913, shows a debit balance of \$27,007.02. That is taking the merchandise at the \$40,000 that the business began with on June 3d and adding thereto all other purchases of merchandise and deducting therefrom the amount of sales of merchandise; that is the gross sales. Based on their statement that they had \$40,000 worth of merchandise on June 3d, the entry on January 25th, 1913, does not show anything in regard to an actual inventory of the merchandise, nor is there any other entry in the book that shows that the books were ever closed out. The merchandise account shows that it was an open, running account during the entire period from June 3, 1912, to July 8th, 1913. If Mr. Clere testified that the merchandise on June 3d was of the value of \$30,000, my conclusion would be that they loaded their merchandise account \$10,000 and as to the value of the goods on January 25th, 1913, my conclusion would be the same. It is all handled as one transaction during this entire period and no inventory is taken, and if they had started off with \$30,000 the balance would then be \$15,000. On the

(Testimony of Josiah Richards.)

25th of January, 1913, the concern owed other creditors than the Clere Clothing Company. I have examined the claims filed in this bankruptcy proceeding and do not find the claims as filed in this bankruptcy proceeding shown on the books that I have before me. The items in the claims are shown however. The items are shown. In reply to your question as to how many of these claims and what amount are for goods sold prior to January 25th, 1913, I find Cluett, Peabody & Company, 3 invoices from December 2d, 1912, to January 2d, 1913, aggregating \$346.30; the amount of the claim as filed was \$408.85, which includes an item sold February 28th, 1913, and those accounts were all entered on the books in the same manner. No part of them was paid. The next one, the Dagg-Dennedon Company, an item [80] of January 16th, 1913—\$271.35, H. E. M. Imas & Sons, an item of November 15th, 1912—\$143.50; that claim is filed. The Lorenz Knit Goods Company, an item of October 29th, 1912—\$180.00, the Spokane Dry Goods had a claim; had a balance but I don't find that claim filed. That is the total of the accounts he has invoiced indicate that the goods were sold prior to January 25th. Those particular invoices were unpaid and their claims filed in August, 1913, and each one of those balances is shown by a particular invoice. I got possession of some of the invoices of the Clere Clothing Company prior to January 25th, 1913. I have a number of invoices for goods subsequent to July 29th, 1912. I have checked those with the books of the company

(Testimony of Josiah Richards.)

and they check. They were all sold on open account from the Clere Clothing Company to the Clere Clothing Company at Spokane, Washington, and were sold on terms 7% November 1st. These particular items that I have here. One of these consignments ran to H. L. Gilmore & Company, care of Praeger-Schlessinger, Spokane, Washington, sold on August 8th, 1912. (It was here admitted by counsel for the Clere Clothing Company that Gilmore & Company and Clere Clothing Company were the same.) I don't find any record of any of these goods sold subsequent to the one item that you have of August 8th to Gilmore & Company; that shows that they were sold on consignment; furthermore I have an additional invoice dated February 4th, 1913, of Clere Clothing Company sold to Clere Clothing Company of Spokane, Washington, an invoice of goods \$864.50 under date of February 4th, 1913. That is the only invoice we have for 1913. The others are all 1912. There is another one attached Praeger-Schlessinger in March. (Exhibits were marked Trustees' Exhibit 20 consisting of 2 sheets and 21 consisting of 24 sheets.) As to whether from the time they started to pay interest at the Bank of Commerce up to July, 1913, that interest was paid on notes of [81] the Clere Clothing Company, will say that up to July, to the end of July, there are no records in regard to what those payments were made for to the National Bank of Commerce other than that the amounts so paid were charged to the Clere Clothing Company but from July 31st on there is a record of the inter-

(Testimony of Josiah Richards.)

est payments on exactly the same account. The interest items are charged as an expense against the business, in exactly the same method as they would be charged if the Clere Clothing Company were owning and operating the business. It would not have been proper to have made the charges they did if they did not own and operate the business. The charge would have to be made against the Clere Clothing Company or for whosever account the payment was made.

Cross-examination.

On these two sheets (indicating) I find the account of the Clere Clothing Company between June, 1912, and August, 1912. Answering your question with reference to these two sheets and asking if those pages were creased at the time I got the books and examined them, and if it appeared that the pages had been doubled up that way as they are at the present time, I will say I believe so. I haven't removed them. I find that these two pages in the ledger are the only ones which appear to be turned down; that is the only account. There is an account commencing with August 15th which isn't turned down and the account which is turned down closes with the 22d day of July. The book is in the same condition as it was when I first examined it. There is a leaf in the interest account that appears to have been folded; it doesn't appear to have been mussed; it appears to have been folded. Page 47 has been creased; that is the last page on the book. I wouldn't make a guess as to whether that was a crease made

(Testimony of Josiah Richards.)

accidentally or one made intentionally. Turning to the account [82] of Clere Clothing Company between June 5th and the 29th day of July, 1912, that account is entitled Clere Clothing Company. There are no other words added to it. Turning to the account between June 5th and July 22d, that account is sheet No. 3 entitled the Clere Clothing Company consignment. I don't think that in testifying I gave any figures as to merchandise purchased between the 3d day of June, 1912, and the first day of August, 1912—\$21,257.90 is the amount which the Clere Clothing Company consignment account, account No. 3 received credit for; goods which included invoices from April 17th to June 28th, 1912, and which are entered on those books between June 5th and July 22d, 1912. As to the question whether, supposing that Mr. Clere testified that the stock of merchandise was worth \$30.00 on June 3d, 1912, and that \$21,000 of merchandise was added between June 3d and the first day of August, 1912, that the books showed a \$40,000 stock of merchandise on August 1st, 1912, I would from that statement believe that the merchandise account had been padded. I will say that is purely a hypothetical question. The statement above isn't borne out by any entries in the books. There are no entries in the books that there was an account of \$40,000 of merchandise on August 1st; the merchandise account of August 1st shows \$27,556.71. I find no record of any checks having been issued on the bank account between June 1st and August 1st, but that between August 1st and August 8th or 10th,

(Testimony of Josiah Richards.)

I find checks signed Clere Clothing Company by Louis Schlessinger to the amount of about \$1500.00. The total amount of interest paid between the 25th day of January, 1913, and the close of the interest account was \$210.00. The records do not show that the interest was all on the note of the Clere Clothing Company. The record shows that between January 25th and June 2d, 1912, interest to the amount of \$210.34 was paid to the National Bank of Commerce and charged to interest account. I testified that between June 3d, 1912, and [83] August 1st, 1912, the books show that Mr. Gilmore received a percentage on all sales and that after the first of August, 1912, Mr. Gilmore's name does not appear in the books. After the first of August, 1912, a salary account was started and salaries were paid to Louis Schlessinger, S. S. Praeger and sundry clerks; to M. M. Levine and Leon Lemon, who were presumably clerks. After January 25th, 1913, the only invoice I have are one of February 4th, sold to Clere Clothing Company and one of March 12th, sold to Praeger-Schlessinger Company; the Clere Clothing Company received credit for both invoices. (The books were marked respectively "Trustee's Exhibits 22, 23, 24, 25 and 26.) (The trustee here rested his case.)

And thereupon counsel for the Clere Clothing Company moved that the objections of the trustee be dismissed and that the claim of the Clere Clothing Company be allowed in full. The motion was denied by the referee and thereupon the claimant, the Clere Clothing Company, to maintain the issues

(Testimony of Josiah Richards.)

on its part, introduced the following evidence, to wit:

The Articles of Incorporation of the Praeger-Schlessinger Company were offered in evidence and marked "Creditor's Exhibit No. 27." A copy of the complaint in the suit of L. Praeger and Clara Praeger, his wife, against T. H. Clere, was offered in evidence and marked "Creditor's Exhibit No. 28."

[Testimony of H. R. Newton, for the Creditor.]

H. R. NEWTON was called as a witness on behalf of the creditor, Clere Clothing Company, and testified as follows:

My name is Henry R. Newton; I am secretary of the Praeger-Schlessinger Company; I have been secretary of the Praeger-Schlessinger Company since about the middle of January, 1912, and was present at the meeting of the Praeger-Schlessinger Company held at the office of Belden & Losey, 1208 Old National Bank [84] Building on or about the 25th day of January, 1913. There were records made of that meeting, which were in my possession until about the time Mr. Nuzum brought this suit, along about the first of May or June, just shortly before the bankruptcy proceedings were filed, when Mr. Louis Schlessinger came up to the office and said he wanted to borrow the minutes of that meeting together with an inventory that I had in my possession, and stated that he would return them in a day or two. He didn't return them and after this trouble arose I demanded of Schlessinger that he return the minutes and also the inventory to me as secretary,

(Testimony of H. R. Newton.)

but he refused to do so. I have copies of the minutes of the Board of Trustees; carbon copies of the minutes of those meetings. These are the copies made at the time the originals were made. (Papers marked in evidence as "Creditor's Exhibit 29"). Those are copies of the originals which were turned over to Mr. Schlessinger after the resolution was adopted and note was executed in the presence of Mr. Schlessinger, Mr. Clere, myself and Mr. Belden and it was signed by Mr. Schlessinger as president of a corporation, and attested by me his secretary, after which it was delivered to Mr. T. H. Clere. I heard the testimony of Mr. Nuzum the other day as to this inventory having been lost. I saw the inventory. The inventory was submitted by Mr. Schlessinger at the meeting of January 25th, 1913. The inventory was about 50 or 60 pages in length, I should say, and purported to show every item of merchandise in the place of business at 111 Howard Street including both fixtures and merchandise. On the front of the inventory there was a tabulated statement segregating the items of merchandise, that is the items of clothing, men's and boy's clothing, from the items of shirts and hats and articles of that nature and then there was a separate item of fixtures. The inventory showed that there was merchandise on consignment belonging to the Clere Clothing [85] Company of \$30,640.00. The inventory also showed that there was other merchandise in the place of business amounting to somewhere between \$4,000.00 and \$6,000.00; I would not care to

(Testimony of H. R. Newton.)

give the exact figures. That there was other merchandise in the place of business belong to the Praeger-Schlessinger Company which had been purchased from other parties, but this \$30,640.00 just represented clothing and some old hats, shoes and old merchandise which was in the original Praeger-Schlessinger store, which had been added while Gilmore and Company was in charge. It also included the fixtures. As to whether or not it included some bills receivable, I think bills receivable and fixtures were lumped. I think they threw in the bills receivable and clothing item was the big item. Men's and boy's clothing, as I remember, was somewhere between \$26,000.00 and \$28,000.00. I would not attempt to give the exact figures, but the clothing item alone was between \$26,000.00 and \$28,000.00. (Creditor's Exhibit No. 30 being bill of sale was admitted in evidence.) As to how the stock in the corporation was held, under what arrangements, I will say at the time this stock was turned over, that was along about in July, Mr. Clere was here in Spokane and at that time arrangements were made for the consigning of this stock to the Praeger-Schlessinger Company. Louis Schlessinger wanted to take the stock over and reorganize the Praeger-Schlessinger Company. Mr. Clere stated he was willing to consign the stock of merchandise to him but he wanted to have something to say about putting him out of the place for the benefit of creditors in case he turned out not to be honest. Schlessinger finally stated that he would turn over the stock certificate to him so

(Testimony of H. R. Newton.)

that he could control the election of a manager if Clere would agree that when the stock of consigned merchandise was disposed of that he, Clere, would turn the certificate back to the original owner. And that was the agreement, that as soon as this consigned stock was disposed of that Clere and myself were [86] to surrender our stock and that the certificates were to be reissued to the original stockholders, who were L. Praeger, S. S. P. Praeger, Clara Praeger and three or four more of the Praegers; I don't know who all they were. The purpose was to keep Louis Schlessinger honest. That was the supposed purpose.

Cross-examination.

I say that the stock was to be held by Clere and myself to keep Schlessinger honest. I didn't have any interest in it. I was holding the stock because the law requires three trustees, I understood, and I was put in to hold one share to make a trustee for the purpose of seeing that Schlessinger was honest; that is he wasn't to run away with the stock of consigned merchandise. Clere had about forty or fifty dollars worth of merchandise that he was turning over to him and Clere was to be three thousand miles away from him, and Clere wanted it fixed so that in case Louis—the Clere Clothing Company had the stock of merchandise here and he was going to turn it over on the first of August and Clere was three thousand miles away. He said he wanted it fixed so that if Louis Schlessinger was to become dishonest and wasn't operating the business correctly

(Testimony of H. R. Newton.)

or on honest principals, then without any formality that Schlessinger could be deposed as manager and the interest of creditors and the interest of the Clere Clothing Company could be protected. There were no other creditors on July 22d, at the time this stock was issued, outside of Clere Clothing Company creditors. It was to protect all creditors until the consigned goods were turned over and disposed of; then we were to surrender our stock into the treasury and new stock was to be issued to the new stockholders. At the time the consignment was disposed of in January—this wasn't done because at that time [87] we took a note for \$30,640.00. That was a sale and as to whether or not the consignment was disposed of at that time, will say the understanding wasn't necessarily—I couldn't tell you the exact language but the understanding was that this stock of merchandise was to be protected and I don't know why it wasn't—why the stock wasn't surrendered at that time, but I suppose it was that they figured that this note was unpaid and there was still reason for keeping Louis Schlessinger honest. There was nothing said as to my holding that stock until the Clere Clothing Company was paid out in full and then after that not caring what happened to the stock. The understanding was that I would surrender my stock when Mr. Clere said so. Mr. Clere was representing the Clere Clothing Company. I would not say whether it was taken in his name for the benefit of the Clere Clothing Company or not. It was their goods that was consigned. Mr. Clere had no claim against them and the purpose was to

(Testimony of H. R. Newton.)

protect the Clere Clothing Company and that was why the stock was issued to me. Belden & Losey and myself were representing the Clere Clothing Company. They represented them in the bankruptcy hearing and prior to the composition. I didn't talk with Clere at all on the first bankruptcy; I talked with Smith I think. The first time I ever saw Mr. Clere was when he came out about the middle of July, 1912. That was about the time Gilmore was ready to close his sale up in the Realty building. Clere insisted at that time that Belden & Losey were representing the Clere Clothing Company and I was with Belden and Losey. I haven't a statement of the items showing the moneys that were paid by the Clere Clothing Company out here or the items of the Clere Clothing Company was in out here in the Praeger-Schlessinger Company. I didn't handle them; Mr. Smith handled them. I didn't know what statement Mr. Nuzum referred to in his testimony the other day. With reference to the above items [88] showing Thirty Thousand some odd dollars that the Clere Clothing Company claim to be in out here I never had any such statements; I never saw such a statement as referred to by Mr. Nuzum. Mr. Clere was terribly mistaken when he testified I had such a statement. I haven't got it. Referring to Creditor's Exhibit No. 29, that is the stockholders and trustees meeting. I think Clere got out here on the 22d or 23d of January, a few days before that meeting. This meeting was held on the 25th and at that meeting we passed a resolu-

(Testimony of H. R. Newton.)

tion as purported to be shown in that exhibit, and at that time I think the note was given. There were no other papers or agreements of any kind passed at that time of writing; none whatever, and none passed subsequent to that time. Answering your question as to how I reconciled this inventory that I stated was \$27,000.00 plus \$46,000.00 for goods bought from the outside with the books of the company which show that actually on that day they had not got over \$25,000.00 worth of goods including the \$10,000.00 increase that Mr. Clere said was above what goods were worth, will say one way of accounting for it is that the merchandise account doesn't show the fixture account in the first place. I said that the inventory showed \$26,000.00 or \$27,000.00 worth of goods, and that in addition to that there were some \$4,000.00 to \$6,000.00 worth of goods other than the \$26,000.00 or \$27,000.00. As to how I reconciled that with the books of the Company which show that altogether with all purchases there was but \$25,000.00 worth of goods, where they took the original item of \$40,000.00 in goods and merchandise instead of \$30,000.00 as Mr. Clere says it should have been, I will say I can reconcile it only in one way—that Louis Schlessinger was dishonest. I know of my own knowledge that Louis Schlessinger sold a bunch of merchandise to—I don't know to my own knowledge except what the party told me. I do know that Louis Schlessinger [89] said to me in the presence of Max Ehrman and others that he sold a package of merchandise to Max

(Testimony of H. R. Newton.)

Ehrman and there is no credit on the book for it. There was some six or seven thousand dollars worth sold to him that there was no credit for. I don't know when it was sold, but it was sold after January. You are asking me how I would reconcile it. I would reconcile it if a man were dishonest afterwards he would be dishonest before. That is the only way I reconcile it. Another thing the merchandise account does not show the fixtures. It showed \$26,000.00 or \$27,000.00 belonging to the Clere Clothing Company and \$4,000.00 to \$6,000.00 bought from outsiders. As to how I reconcile that with the book that show all purchases and sales and the books show a total of only \$25,000.00 when the books also show there was \$10,000.00 in water put in them in June, I will say I can't reconcile that. I never kept the ledger at all. It shows \$25,007.02. I don't know whether that represents an inventory or what it represents. It shows, or purports to show the goods sold and the goods bought from some time the first of August, 1912. As to whether if that book was correct then the inventory was wrong I don't know whether it would be—yes, if the book was correct the inventory would probably be incorrect. I don't know as to how that inventory was taken; that is what prices were put on it; I know who took it though. As to the old hats and old furnishing goods, I don't exactly mean they were exceedingly out of date, but it was merchandise that was in the stock of the old Praeger-Schlessinger Company or merchandise which was added by Clere while Gilmore

(Testimony of H. R. Newton.)

was in charge. I don't know what figure those goods were put in at except what Louis Schlessinger said.

[Testimony of E. H. Belden, for the Creditor.]

E. H. BELDEN, called as a witness on behalf of the creditor, testified as follows: [90]

Direct Examination.

My name is E. H. Belden; I was attorney for the Clere Clothing Company on the 25th day of January, 1913. I was present at the meeting of the Board of Trustees and Stockholders of the Praeger-Schlessinger Company on that date. It was held in our office. I saw an inventory of the stock of goods belonging to the Praeger-Schlessinger Company submitted to the trustees. As to what that inventory consisted of and what the figures showed, to the best of my recollection, I couldn't tell how the inventory was arrived at. There was a stock and the fixtures, possibly some bills receivable, that were totalled on the front page of the inventory, the inventory being an inventory of probably fifty or sixty pages, I should judge that amount, and there the different footings were run up and the fixtures and stock of merchandise and the other items that were to be turned over to the Praeger-Schlessinger Company were added up, and that total amounted to the amount named in the note. I prepared the note myself; had the inventory before me at the time the note was drawn and I remember distinctly of writing the note, having reference to the inventory to get the exact amount written in the note. I can't

(Testimony of E. H. Belden.)

tell at this time what the exact figures I saw at the end of the inventory were. I don't know now the amount of stock of merchandise, or how much was figured in for fixtures or bills receivable or what other items went in, only in a general way, and my recollection is that the stock was something like twenty-six or twenty-seven thousand dollars, but I wouldn't undertake to say; just an impression from the fact that the figures—my recollection is—figured in at about four thousand, something like that and then some bills receivable. I would not undertake to say positively though, what the figures were, but I do know that the total inventory as shown by that inventory was [91] the same amount exactly as the note, because when I wrote the note I had the inventory before me and wrote the note from the figures before me on the inventory. I was present at a conversation between Louis Schlessinger and T. H. Clere and myself along in July, 1912, at the time this transfer of the stock certificates was discussed. I had a number of conversations; the arrangement as I remember it, was this: That the stock was held by Clere as Trustee. I know old man Praeger, I think it was, hesitated somewhat about turning over his stock. He insisted upon a writing at first. I told him I wouldn't give him a writing and finally Louis Schlessinger prevailed upon him to turn it over upon a verbal agreement. I didn't want to give him a writing, because I didn't want him to get any the best of it, and I told him he would have to take Clere's word for it entirely. The stock

(Testimony of E. H. Belden.)

was held by Mr. Newton, one share, to act as trustee only. I was present when Louis Schlessinger came for the inventory and the resolution, and gave this inventory to Louis Schlessinger myself prior to the bankruptcy proceeding. I think I gave him the inventory, but didn't give him the minutes; I think Mr. Newton had the minutes. The inventory had been in my office a long time, until just a short time before this last suit was made by Mr. Nuzum. It was just prior to the filing of the petition in bankruptcy. The inventory was delivered then to Louis Schlessinger. I never did see the inventory after it was delivered to him.

Cross-examination.

In speaking of the figures in the inventory, I mean only the total. I didn't take the inventory. Nobody took it in my office. Mr. Schlessinger came into the office at the meeting that evening. Mr. Clere had, I think, staid over a day so as to enable them to finish the inventory and they had worked on the inventory [92] and completed it. I don't know whether Mr. Clere worked on it or not. It isn't hearsay with me; I know of their working on the inventory from what the two of them said. I don't know what price that inventory was taken at and cost they put on the goods, only what they told me. I don't know how much water was in it. I don't know how much freight was added to it; I don't know whether the expense of running the business was added to it. I left that to Mr. Clere. I don't know as to whether there was any deprecia-

(Testimony of E. H. Belden.)

tion put on the fixtures. I know something about it. I took the total of the total items on the first sheet of the inventory. It wasn't the sheet that had been offered in evidence here at all; on the first sheet were the totals, it was divided up so much merchandise, so much fixtures, and my recollection is that there were some bills receivable but I would not be sure as to that. They were all extended so much and then they were added up and they agreed that it was the amount of the inventory, and from that total I wrote the note which is filed here, which is in my own writing. I judge that they didn't include cash in the bank; I don't know. I don't have any distinct recollection as to that. My recollection is that there wasn't any goodwill included in it; I couldn't say that there wasn't and I am quite sure that there wasn't. It didn't include any credit for Ball of this Eight Hundred Ten Dollars that you received. There was nothing of that kind. It wasn't a part of the inventory. I did not at that time have a statement showing the moneys advanced by Clere in this former composition in bankruptcy, the moneys paid by Clere to the Exchange National Bank and moneys received by the different creditors. I was the attorney for the Clere Clothing Company at the time that the stock was turned over to Mr. Clere. As to whether the stock was turned over to Mr. Clere for the Clere Clothing Company for the benefit of the Clere Clothing Company, will say it was turned over to Clere as a protection for the Clere Clothing Company. Mr. Clere at that time

(Testimony of E. H. Belden.)

was presumed to be representing [93] the Clere Clothing Company. I assume that Mr. Clere did not have any interest himself in the claim of the Clere Clothing Company or in the Praeger-Schlessinger Company's business; that he did not personally have any interest in the proposition other than as the President of the Clere Clothing Company—not that I know of. As far as I know he was at all times acting as an officer of the Clere Clothing Company in all our dealings here with him in his Praeger-Schlessinger matter, he represented that he was President of the Clere Clothing Company. He didn't say that he was acting on their behalf in these matters that I have testified about but I presume that was the case, and Mr. Newton, in taking over this stock, was acting on your behalf for the Clere Clothing Company; he had no personal interest in it himself, he was a figure-head trustee in order that their claim might be secured.

Redirect Examination.

I heard Mr. Nuzum testify in regard to a conversation in our office with Mr. Clere in which he stated that Mr. Clere admitted that this Thirty Thousand Six Hundred Forty Dollar note was made up of the items set forth in that schedule. If there was such a conversation I didn't hear it. I was present at two or three conversations. It would be pretty hard to tell who Mr. Nuzum was representing. He had brought a couple of suits I think against Mr. Clere and the Clere Clothing Company. I didn't hear any such conversation as detailed by Mr. Nuzum.

(Testimony of E. H. Belden.)

Recross-examination.

If I was going to testify positively on the subject as to whether or not there was such a conversation as Mr. Nuzum detailed, I would say that there was no such conversation. In fact, Mr. Clere did not make any such statements as to the inventory or as [94] to how he arrived at the amount of that note, because he couldn't have said that because that wasn't the fact and Clere knew it, and I know he could not have said it. Now, in the entire conversation there was so much said there that it would be difficult for any person to detail all that was said. With reference to such a conversation as Mr. Nuzum detailed, if such a thing was said, I don't remember it, or didn't hear it, and my best recollection is that there was no such conversation; I think I could testify that such a conversation did not occur, but I would prefer not to. My best recollection is that such conversation did not occur. With reference to Exhibits 17 and 18 I wish to say I don't think I ever saw them until they were produced here, but anyway they are incorrect in one respect that I know of, and that is showing the payment to Belden and Losey of Two Hundred Fifty Dollars; I don't know where that came from, because I didn't get the money. I believe Mr. Nuzum in his testimony the other day said that I disputed that in the former conversation testified to by him. [95]

[Testimony of Leon Levy, for Claimant.]

LEON LEVY, of Syracuse, N. Y., was called as a witness on behalf of the claimant, and testified as follows:

I reside in the City of Syracuse and conduct a business as commercial adjusters and sales conductors, under the firm name of H. L. Gilmore & Company. I am acquainted with the Clere Clothing Company of this city and went to Spokane in May, 1912, on their behalf, to conduct a sale of the stock of the Prager-Schlessinger Company, arriving there May 30th, 1912. I went there under the direction of the Clere Clothing Company, to take charge of this stock which I understood the Clere Clothing Company had purchased. It was my understanding that the Clere Clothing Company got possession and title to this stock through an order of the Bankruptcy Court of the State of Washington, ordering it to be turned over by the Trustee of the Prager-Schlessinger Company to the Clere Clothing Company, and by virtue of a bill of sale executed by the Prager-Schlessinger Company to the Clere Clothing Company. This merchandise of the Prager-Schlessinger Company was consigned to the H. L. Gilmore Company as selling agents of the Clere Clothing Company, by the Clere Clothing Company, and title to said merchandise remained in the Clere Clothing Company. H. L. Gilmore & Company operated a sale in the City of Spokane, Washington, for the Clere Clothing Company. The Clere Clothing Company added stock to that then in my possession,

(Testimony of Leon Levy.)

amounting, approximately, to twenty-one or twenty-two thousand dollars. I didn't make purchases myself, of certain merchandise in Spokane, which was added to that stock during the sale, but I sanctioned the purchase. I am not sure that all of that merchandise was paid for, but when I left there I left enough money to pay everything that was owing and ordered those bills paid. I do not know the exact amount of merchandise that was purchased there; I think there was a hat bill and a few [96] hundred dollars for furnishings. Those bills were all contracted in the name of H. L. Gilmore & Company, and I deposited the moneys received from the sale in the National Bank of Commerce of Spokane, in the name of the Clere Clothing Company. All moneys received by me at that sale, over expenses, were sent to the Clere Clothing Company, or deposited in the National Bank of Commerce in its name. When I left Spokane, I left certain sums of money sufficient to pay all outstanding local bills in the hands of Louis Schlessinger, or, rather, in the Bank, with a request to him to check out all sums of money to pay the local bills. He was a member of the corporation of Prager-Schlessinger Company. I was instructed by the Clere Clothing Company to turn over the stock of merchandise and fixtures which remained after the sale, to Prager-Schlessinger, and pursuant to those instructions, I did turn over the remainder of that stock of merchandise, furniture and fixtures and accounts, to the Prager-Schlessinger Company, with eleven or twelve hun-

(Testimony of Leon Levy.)

dred dollars left over to pay local bills with. I simply turned it over as Mr. Clere told me to. My understanding was, it was consigned as selling agents to the Prager-Schlessinger Company. I did not give to the Prager-Schlessinger Company, in behalf of the Clere Clothing Company, any authority beyond that of selling agent for the Clere Clothing Company. Mr. Schlessinger did not pay these local bills while I was there, out of the money left with him by me, but he informed me by letter afterwards that he had taken care of them. While I was there, there was some insurance taken out on this merchandise, which I paid for from the proceeds of the sale. Those policies were taken out in the name of the Clere Clothing Company and loss payable to the Clere Clothing Company.

Cross-examination.

I went out there to sell on a commission basis. I had [97] no interest in the stock myself, other than my commission. I made the arrangement possibly two or three weeks before I went to Spokane. I don't know whether any of the goods that were consigned to me had been shipped before I left. To the best of my memory, I commenced to receive the consigned goods two or three weeks after I got there. I got out there on the 30th of May, I think. There were goods consigned to me from April 17th prior to the time that I went. The consigned goods were put in to fill out the stock of merchandise which I had, and all used in making the sale I was conducting. We kept track of all consigned goods sold by

(Testimony of Leon Levy.)

the lot number from the inventory from the bills, but I didn't keep that money separate—it was all deposited. I didn't divide the expense, the expense was taken out of the lump sales. The profits of the merchandise went with the sales of the others. At first we made a long profit on the goods shipped by the Clere Clothing Company, after deducting the expenses. I am not able to state positively, but I don't think that a great deal of the consigned goods was sold at less than the invoice prices by me during that sale.

Redirect Examination.

I never authorized the Prager-Schlessinger Company to do anything other than to sell these goods for the account of the Clere Clothing Company. I never authorized them to contract any debts in behalf of the Clere Clothing Company. I turned over the merchandise, fixtures and accounts and the sum of money was in the Bank to the Prager-Schlessinger Company. I gave them no authority whatsoever, because I had no right to do so.

Recross-examination.

Mr. Clere was not there at the time, he was there two or three weeks before that, if I remember right. He told me to wait until I was going to close the sale, before I turned this [98] business over to the Prager-Schlessinger Company. I didn't turn it over to them to close up the business, they were going to move on Howard Street and go on with the business there. I told Louis Schlessinger, an officer of the Prager-Schlessinger Company, in active charge of

(Testimony of Leon Levy.)

its affairs, that the Prager-Schlessinger Company was to act as selling agents of the Clere Clothing Company only. I had authority to conduct the sale, and if I needed any goods, to buy them. That was about all—I did not have any general authority to act as general agent of the Clere Clothing Company.

[Testimony of Thomas H. Clere, for Claimant.]

THOMAS H. CLERE, being called as a witness by the claimant, testified as follows:

I am president of the Clere Clothing Company of Syracuse, N. Y., and have been for about twelve years. The business of the Clere Clothing Company is that of manufacturers of young men's clothing. We sell to the retail trade. The Clere Clothing Company does not operate any retail stores at all. I am acquainted with the Prager-Schlessinger Company of Spokane, Washington, and have sold clothing at wholesale to it for about a year prior to its first failure. I loaned the Prager-Schlessinger Company two thousand dollars prior to its first failure, to assist them in business. The Prager-Schlessinger Company went into bankruptcy in the year 1912—that is the first failure. At that time, the Clere Clothing Company was a creditor of the Prager-Schlessinger Company in the sum of \$6,314.69. I was acquainted with Louis Schlessinger then one of the officers of the Prager-Schlessinger Company at the time of the Bankruptcy in 1912, the first failure. He came to Syracuse at that time to see me in regard to making a composition with the creditors of the Company. I had confidence at that time in Mr. Schlessinger's hon-

(Testimony of Thomas H. Clere.)

esty. I advised the Clere Clothing Company to advance [99] sufficient money to make a composition with the creditors of the Prager-Schlessinger Company. The Clere Clothing Company, acting under my advice advanced to the Prager-Schlessinger Company the sum of \$26,247, which was used by the Prager-Schlessinger Company in effecting a composition with its creditors. The District Court of the United States for the Eastern District of Washington, on the 31st day of May, 1912, made an order by which the stock of merchandise, furniture, fixtures and accounts belonging to the Prager-Schlessinger Company was turned over to the Clere Clothing Company in bulk, and on the same day the Prager-Schlessinger Company executed a bill of sale of all its assets to the Clere Clothing Company, the consideration therefor being the sum of \$26,247, which was advanced by the Clere Clothing Company to it to perfect this composition. The Trustee of the Prager-Schlessinger Company, pursuant to said order and said bill of sale, conveyed and turned over to the Clere Clothing Company the assets of the Prager-Schlessinger Company, the estimated value of which was \$30,000. The inventory showed at cost a greater value than \$30,000, at the price they put on it, I think, \$35,000 or \$40,000 or \$50,000, but they were not worth it. A satisfactory estimate would not be over \$30,000. The merchandise that the Clere Clothing Company received was turned over to H. L. Gilmore & Company on consignment to be sold. We retained the title. H. L. Gilmore & Company operated a sale

(Testimony of Thomas H. Clere.)

for the Clere Clothing Company in the City of Spokane, and the Clere Clothing Company added stock to that turned over of the value of something over \$21,000. H. L. Gilmore & Company purchased a little stock from merchants in Spokane that I knew about. I did not give him any authority whatever to purchase any in the name of the Clere Clothing Company. The proceeds of the sales of the merchandise sold by H. L. Gilmore & Company were deposited to the credit of [100] the Clere Clothing Company in the National Bank of Commerce and they sent drafts here occasionally to Syracuse. I received all of the moneys, so far as I know, that were produced from the sale of our merchandise. On or about August 1st, I instructed H. L. Gilmore & Company to turn over the merchandise, furniture, fixtures and accounts, in their hands, belonging to the Clere Clothing Company, to the Prager-Schlessinger Company of Spokane. As president of the Clere Clothing Company, I arranged with the Prager-Schlessinger Company to act as our selling agents at Spokane, giving them no authority beyond acting as selling agents only for us, and they were to send us the money as it was sold. We retained title—left it with them on consignment. The Prager-Schlessinger Company never at any time conducted its business in the name of the Clere Clothing Company. They positively never had any authority of any name or nature to carry on the business for us. We got a little of the proceeds of the sale of the merchandise consigned by my Company to the Prager-Schlessin-

(Testimony of Thomas H. Clere.)

ger Company. I don't know what became of the rest, we never got it. We insured the stock belonging to the Clere Clothing Company in the hands of the Prager-Schlessinger Company, in the name of the Clere Clothing Company, and the Clere Clothing Company paid the insurance through Mr. Gilmore. After August 1st, when we consigned this merchandise to the Prager-Schlessinger Company as our selling agents, we shipped additional merchandise to them from time to time, charging it to ourselves, but billing the cases to them, so that we would be sure to retain title to the goods. We shipped the goods out there for our account. The aggregate amount of these shipments is approximately \$6,024.95. That was the fair and agreed value of this merchandise. The Prager-Schlessinger Company continued to sell the merchandise consigned by the Clere Clothing Company to it from about August [101] first, 1912, to some time in January, 1913,—about the twenty-fifth of January. I was in the City of Spokane on that date and had a conversation with Louis Schlessinger, who was then the president of the Prager-Schlessinger Company. He wanted to buy the stock out and out. He asked me to sell to the Prager-Schlessinger Company all of the stock of merchandise, furniture, fixtures and accounts belonging to the Clere Clothing Company, which was in the hands of the Prager-Schlessinger Company, consigned to it for sale. I asked him to take an inventory of our merchandise. I asked him the value of our merchandise, and he said he would take an in-

(Testimony of Thomas H. Clere.)

ventory. He said he did not know the exact value until he took an inventory. He took an inventory. I had nothing to do with the taking of it, but I examined the same after he had taken it. Sidney Prager and, I think, two or three other clerks in the store of Mr. Schlessinger, assisted in the taking of the inventory. The inventory showed with regard to our merchandise, that we had over \$30,640. I then agreed to sell the merchandise of the Clere Clothing Company to the Prager-Schlessinger Company for that sum. I was holding some stock of the Prager-Schlessinger Company, in trust, and was present at a meeting of the trustees of the Prager-Schlessinger Company and of the stockholders of the Prager-Schlessinger Company, held at the office of Belden & Losey, 1208 Old National Bank Building, Spokane, on the 25th of January, 1913. All of the stockholders were present at the stockholders' meeting and all the trustees were present at the trustees' meeting. Louis Schlessinger presented the inventory of the stock, merchandise, furniture and fixtures owned by the Clere Clothing Company in the possession of the Prager-Schlessinger Company at that time. That was the same inventory that I have referred to. At that meeting, I offered, on behalf of the Clere Clothing Company, to sell the merchandise, furniture and fixtures belonging to the Clere Clothing [102] Company, to the Prager-Schlessinger Company, for the sum of \$30,640, and to accept in payment therefor a note of the Prager-Schlessinger Company, due upon demand, with interest at six per cent per

(Testimony of Thomas H. Clere.)

annum from maturity. At that meeting we had a discussion of the proposition and went over it. A resolution was then offered, to the effect that the Prager-Schlessinger Company accept the offer of the Clere Clothing Company and buy said merchandise. That resolution authorized and directed the President and Secretary of the Prager-Schlessinger Company to execute the note of that corporation to the Clere Clothing Company, in the sum of \$30,640. Immediately after the meeting of the Trustees, the Stockholders had a meeting, at which all of the stock of the Prager-Schlessinger Company was represented and voted. A resolution was introduced at the meeting of the Stockholders ratifying the action of the Trustees in purchasing the stock of merchandise, furniture and fixtures and the execution of a note for that sum, and that resolution was passed unanimously. The first resolution that I mention, which was introduced by the Board of Trustees, was also unanimously passed. The minutes of this meeting were left with the Secretary of the Prager-Schlessinger Company, at Spokane, Washington. At the time that I made the offer to sell, or prior to the time that I made this offer to sell this merchandise, furniture, fixtures and stock belonging to the Clere Clothing Company, to the Prager-Schlessinger Company. I had discussed the matter with the directors of the Clere Clothing Company. Thereafter, and on the 4th day of March, 1913, they held a meeting, at which time a resolution was introduced unanimously ratifying my action in selling the mer-

(Testimony of Thomas H. Clere.)

chandise, stock, furniture, fixtures, etc., to the Prager-Schlessinger Company for its note. The Clere Clothing Company sold to the Prager-Schlessinger Company its stock [103] merchandise, furniture and fixtures, which were held by the Prager-Schlessinger Company on consignment, and the Prager-Schlessinger Company gave the Clere Clothing Company its note for \$30,640, payable on demand. Not a cent of that note has been paid and the whole amount thereof is due and owing to the Clere Clothing Company from the Prager-Schlessinger Company. After this 25th day of January, 1913, the Prager-Schlessinger Company ordered merchandise from our Company and we shipped it to the amount of \$1610.67. The price fixed in the invoices of the merchandise sold by the Clere Clothing Company to the Prager-Schlessinger Company after January 25th is the fair reasonable market value of the merchandise sold to the Prager-Schlessinger Company. No part of the amount due and owing to the Clere Clothing Company from the Prager-Schlessinger Company after the 25th day of January, 1913, has been paid, and the whole amount thereof is due and payable. Since the 25th day of January, 1913, the relation of the Clere Clothing Company with the Prager-Schlessinger Company has been that we simply sold them goods the same as we would any other concern. The relation was that of debtor and creditor and there were no other relations whatsoever. Prior to the 25th day of January, the Prager-Schlessinger Company was never indebted to the Clere Clothing

(Testimony of Thomas H. Clere.)

Company, but they held our merchandise as selling agents only. The Prager-Schlessinger Company never had any instructions of any name or nature, either oral or written, to buy any goods for our account. During the time they were selling our merchandise, they made certain payments to the National Bank of Commerce upon a note which we had given said bank. The payments that they made were proceeds of the sale of our merchandise and in making those payments they had depleted our stock by sale. These payments on the note were made by my direction. At the time of the first failure of the Prager-Schlessinger Company, when the Prager-Schlessinger Company perfected or offered its [104] composition, the Clere Clothing Company advanced \$26,247. At that time Louis Schlessinger and his father in law and mother in law and some other relatives, owned the stock of the Prager-Schlessinger Company. At that time Mr. Schlessinger stated to me that he desired to have the Prager-Schlessinger Company continue in business with himself as manager. He represented to me that if the stock of merchandise sold to my company in bulk by the Prager-Schlessinger Company was consigned by the Clere Clothing Company to the Prager-Schlessinger Company, that the Prager-Schlessinger Company might continue in business and would purchase additional merchandise from us if it was able to get out of the hole. At that time I had confidence in the business ability and integrity of Mr. Schlessinger. We were consigning to him a large amount of merchandise. I then agreed with Mr. Schlessin-

(Testimony of Thomas H. Clere.)

ger and the others that before we would do business with them at all that they must surrender all of their stock in the Prager-Schlessinger Company and that new certificates should be issued to H. W. Newton, T. H. Clere and Louis Schlessinger. It was then agreed that Mr. Newton and myself should hold that stock in trust for the former stockholders and that as soon as the consignment arrangement between the Clere Clothing Company and the Prager-Schlessinger Company was dissolved, or if the merchandise should be sold outright to the Prager-Schlessinger Company, and as soon as payments should be made in full therefor, that Mr. Newton and I would surrender our stock and that new certificates should be issued to the parties who formerly owned it. I held this stock individually—the object of the arrangement was solely for the purpose of placing the control of the interests of the Prager-Schlessinger Company in the hands of creditors, so that we might, if necessary, at any time we discovered that Mr. Schlessinger was not keeping faith with the creditors in taking care of the business, that he could be removed. [105] That is, if he wasn't honest. In order to prevent his dissipating the funds or misappropriating them, to the detriment of creditors, generally, and the Clere Clothing Company as one of them. There was no other reason for my taking in my name any of the stock of the Prager-Schlessinger Company. This was done under advice of counsel. I might add that we wanted a customer out there and we thought he would make good, and if he made good and paid

(Testimony of Thomas H. Clere.)

us up we were willing to turn back the stock with the script. I hardly think of anything other than what I have testified to, that I choose to state, in regard to this matter. I never authorized the Prager-Schlessinger Company to deposit any moneys in the National Bank of Commerce in the name of the Clere Clothing Company. I never knew that any moneys were deposited by the Prager-Schlessinger Company in the name of the Clere Clothing Company, until after the petition in bankruptcy was filed. Checks received by me in payment of merchandise, or otherwise, were signed Prager-Schlessinger Company, per Louis Schlessinger, President. The Clere Clothing Company never held any stock, that is to say script, of the Prager-Schlessinger Company.

Cross-examination.

When Prager-Schlessinger paid us up we were willing to turn back the stock—the script. I did not hold it as security for the debt of the Clere Clothing Company. I held it for all other creditors as well. If they paid us up and it looked as though they were successful, I was going to turn it back to them; we were, that is, Newton and myself. I held all but two shares in my own name, one share was in Newton's name and one was in Schlessinger's. Newton was a clerk in the office of the attorneys for the Prager-Schlessinger Company. As to whether Belden & Losey represented the Clere Clothing Company in the first bankruptcy proceedings, I didn't know that they were attorneys. I don't know that other attorneys were attorneys for Schlessinger [106] in

(Testimony of Thomas H. Clere.)

the bankruptcy matter and that Belden didn't represent them in that bankruptcy matter at all, even up to the time the composition was made. I said I paid out \$26,247 to that composition. I don't just recall whether I paid the Trustee \$21,474.83, the item of \$26,000, that is the amount that was required to be put up. When I put up this money, Mr. Smith had charge of it. I do not know how much was paid to the Exchange Bank outside of the amount it got in dividends. If I only paid the Trustee \$21,474.83, I suppose the balance of it went for expenses. I do not know whether it was paid to the Exchange Bank over and above its dividend. I did not know who the Exchange Bank were. I think the Clere Clothing Company got twenty-five cents on the dollar on their claim. Our books do not show that the claim of the Clere Clothing Company was paid in full. I think twenty-five cents on the dollar is all we got. I don't know whether the check to Mr. Ball for his twenty-five per cent dividend was turned over to the Clere Clothing Company. I don't know whether a part of the check of Cohen, Rosenhaupt & Blake was turned over to the Clere Clothing Company—the check which came from the referee. I don't know anything about the check of A. Crystal or whether it was turned over to the Clere Clothing Company. I don't know whether a check of M. Manley and James J. Murphy was turned over to the Clere Clothing Company. I don't know whether Clara Prager, S. S. Prager and R. Hutchins turned their checks over to the Clere Clothing Company. I know nothing about

(Testimony of Thomas H. Clere.)

it. If this money had come into the hands of the Clere Clothing Company, I don't think our books would show, because we borrowed the money out there; there were certain moneys paid on the note which we borrowed of the bank. I don't know whether the claims of these people whose names I have mentioned were allowed by the Referee. If the checks bear the indorsement of the Clere Clothing Company, Mr. Smith could better explain how we handled the checks, or whom we got them of, or anything of that kind, because he [107] handled it. I don't know anything of any other expenditure of money of this composition by our people than the payment to Referee of the sum that he was to distribute among the creditors. We put up and borrowed \$26,247 in the composition. I presume that it was to go into that composition. That was what it was borrowed for. I don't know whether anything was said in the composition about the Prager-Schlessinger Company paying the attorney's fees of the claimants, or any of them. But we did borrow the amount of \$26,247, and that was the amount we put up. I don't know where it went to. I had nothing to do with checking it out, or paying it out, or giving the notes. Mr. Smith gave the notes. I don't think the list of creditors was ever submitted to me, so that in passing on the question of advancing the amount of composition. I don't absolutely know whether the amount represented by Mr. Smith was correct or not, except that we took his word for it. I knew nothing of the various checks that were paid out by the referee to

(Testimony of Thomas H. Clere.)

the creditors whose names I have mentioned in this composition having come to the Clere Company. I couldn't say whether they did or did not. Answering your question, if we did, would that be a proper credit to be allowed the Prager-Schlessinger Company, or were I to keep it, I will say I never went into that proposition and know nothing about it. I think it was in July that I took the assignment of this script. It was not when I advanced the \$26,000. I think it was in May I advanced the \$26,000. I didn't turn over the property to the Prager-Schlessinger Company until January following, but took the script from the Prager-Schlessinger Company in July, when they owed me nothing. At that time they didn't owe me a dollar. That was to secure the honest purpose of Mr. Schlessinger, and that purpose was to be honest. I just made him put up this stock to insure me that he would be honest and I was to be the judge of his honesty. No, he did not run [108] the business as the sales agent for the Clere Clothing Company until the following January. He was selling the goods of the Clere Clothing Company. They were insured in the name of the Clere Clothing Company. I do not know that the money was deposited in the name of the Clere Clothing Company the same as it was when Gilmore was there. I don't know that I had changed the account. I think they paid about \$10,000 at my direction, to the bank, on these notes. I don't recall the amount that they paid on those notes to the Bank that we had given for this money we got to make the composition. We turned

(Testimony of Thomas H. Clere.)

over this stuff to Schlessinger on consignment. We didn't direct where he should do business or make his deposits. We had no security whatever, except the goods, at all, for the amount of goods or his accounting for them. When he would sell the goods, we had no security then about his accounting for the money. It is not a fact that that is what we took this script for, to secure us when we turned the goods over to the Prager-Schlessinger Company. That had nothing to with it at all. The invoice of the goods at the time we made the sale in January was \$30,600, when we sold the goods and took this note. It is not a fact that this invoice was a little over \$26,000.

(By Mr. NUZUM.)

Q. Isn't it a fact that that invoice was a little over \$26,000? You remember the conversation that we had up in Belden's office when Belden, Mr. Schlessinger, Mr. Clere and myself were there, in which I asked you about the giving of the note for more than the invoice, and you answered that a man could give a note for what he wanted to? A. I do not.

Q. Do you remember on that date that Mr. Schlessinger asked you as to a memorandum that was used in arriving at this amount of \$30,600, and you said that you had that memorandum but [109] that it wasn't with you?

A. I think that is a fact. I think Mr. Newton has that memorandum now. There was a memorandum used in arriving at the \$30,600, that is the amount due the Clere Clothing Company.

Q. That memorandum showed the merchandise

(Testimony of Thomas H. Clere.)

from April to May, 1912, and from August 8 to December 27, 1912, and the amount deposited with the trustee, the amount paid the Exchange Bank, in full, the balance I mean to make the Clere Clothing Company claim paid in full, and the balance in expense paid out to Mr. Smith and other individuals, making a total of \$30,600, that was the memorandum.

A. I presume it was; I don't know about the Exchange Bank.

Q. You did have a memorandum of that sort in which you figured out what the Clere Clothing Company had obligated itself to pay in order to arrive at what you took this note for. In other words you wanted to be made whole.

A. What was due the Clere Clothing Company at that time, that is, if it was all paid up; there was nothing due the Clere Clothing Company as it owned all the stock.

Q. The Clere Clothing Company wanted to be made whole in this matter before it would turn over this stock of goods?

A. That was the amount due; I don't understand making whole.

Q. What do you mean by the amount due?

A. The amount that was due the Clere Clothing Company, the amount that they had invested out there.

Q. And that was the amount that you figured when you made this note.

A. I didn't make out the note.

(Testimony of Thomas H. Clere.)

Q. Well, when you agreed on the amount of the note.

A. I presume it was fixed up in some manner like that.

Q. What you understood you got was a note that would pay up [110] the Clere Clothing Company for all the money they had put in and obligated itself to pay, and the balance of their account in full.

A. I don't know whether we ever crossed that original debt off to profit and loss, or not. Yes, there was a memorandum used. We did have a memorandum which showed the figures which we claimed the Clere Clothing Company was out or had invested.

Q. And that was the amount the note was made for, isn't that a fact? A. I think that is all.

Q. If you did pay the Exchange Bank \$4,272.20 over and above its dividend, that was included, wasn't it?

A. I know nothing about the Exchange Bank whatsoever. I didn't know they had such a bank out there.

Q. Don't you remember in discussing the matter with Mr. Belden that day, either you or Mr. Belden told me that that amount was paid the Exchange Bank to get some papers away that might incriminate Mr. Prager?

A. I never heard of any such conversation. In all my transactions with the Prager-Schlessinger Company, I was principally representing the Clere Clothing Company. Prager-Schlessinger did not owe me anything individually. I was out there represent-

(Testimony of Thomas H. Clere.)

ing the Clere Clothing Company. Anything I sold there was the property of the Clere Clothing Company and anything that I got from them in the way of notes was the property of the Clere Clothing Company.

Q. The stock you say you held as an individual?

A. The script.

Q. The script you held as an individual and you say you would return it when the debt due the Clere Clothing Company was paid? [111]

A. Well, I think I had a conversation that when all his debts were paid, I think that is the arrangement that we made, when he cleaned up, when he was successful.

Q. That is, he couldn't owe anybody?

A. I think that was the understanding, that I was to hold it. I don't think the stock on its face designated me as Trustee. I think I still have the stock. I don't think I have got Schlessinger's one share now. I don't think I took an assignment for that from Schlessinger on dismissal of the litigation out there.

Q. Who designated Newton as one of the stockholders?

A. I think Schlessinger wanted him.

Q. You know that you designated him yourself because he was under your attorneys, don't you?

A. I don't remember of putting him in. I think Schlessinger wanted him.

Q. You know, don't you, that he is one of the firm that has represented you in all of this litigation and

(Testimony of Thomas H. Clere.)

all the negotiations with regard to Belden & Losey?

A. I know that he is one of their firm.

Q. You know that he represented you in the negotiations commenced by Prager and his wife against you and the Clere Clothing Company?

A. I think they did, that is, from last July on; I don't think they represented us before that.

Q. Did you ever pay them any attorneys' fees?

A. We did not.

Q. Do you remember my reading over the list to you of what Mr. Prager claimed had gone to make this \$30,000 note, and [112] the amount of \$250 attorneys' fees for Belden & Losey was in there, and you said you knew nothing of that \$500 for Levy of the Credit Clearing House, and you said you knew nothing of that and Smith's bill of \$1,890 and one Dansiger of \$450, and you said that you thought Mr. Smith ought to give it back because he had spent over two months out there away from his business; do you remember that?

A. I hardly think I do.

Q. Well, do you remember my reading a list over to you in which the only item you disputed in the whole list was the amount you owed Belden & Losey, in making up the items of that \$30,600 note?

A. I don't remember. During the time that the Prager-Schlessinger Company was conducting the business as our sales-agent, I wrote some letters to some of the creditors concerning their situation. I did not mention to the creditors at that time that the Prager-Schlessinger Company was doing busi-

(Testimony of Thomas H. Clere.)

ness as our sales-agents. I did represent to them that they were conducting business in their own name at that time. I wrote probably fifty letters to people that wrote us for references, and I told them that I thought they were all right.

Q. That at that time you knew that they were doing business as if they owned this stock of goods, although it belonged to you?

A. No, they bought other goods; they were doing business and held our goods simply on consignment. But from everybody else they bought goods out and out.

Q. You were also using their paper to some extent, weren't you? [113]

A. We did have as high as \$3,000 in accommodation notes in denominations of \$500 each and as they came due we paid them.

Q. In other words you had their accommodation notes out, although they owed you practically nothing at that time?

A. That is a fact. That was done at my suggestion. The note which you exhibit me here is on the series you refer to. (Received and marked Exhibit One.)

Q. There was meeting of the trustees and stockholders and both of the Prager-Schlessinger Company prior to the time that they were declared bankrupt in this last proceeding in the summer of 1913?

A. Well, I don't know whether there was one or not.

Q. Don't you remember that the notice showed that

(Testimony of Thomas H. Clere.)

at the meeting you and Newton voted that a voluntary petition be filed or bankruptcy admitted after the involuntary petition in bankruptcy had been filed?

A. I don't remember.

Q. Don't you remember that you gentlemen requested that I have Schlessinger there after we had dismissed the litigation that the Pragers had brought against you that he might agree to it?

A. Whatever was done I haven't any recollection of out there.

Q. If you attended any meetings of the stockholders or trustees at that time and the record showed so, for whom were you acting? A. Myself.

Q. Anything to do with the Clere Clothing Company? A. Not in that, I don't think.

Q. Whom were you representing when the Clere Clothing Company by you joined in the involuntary petition in bankruptcy? [114]

A. I presume I was representing the Clere Clothing Company, if it did.

Q. So that in petitioning for the involuntary bankruptcy you acted for the Clere Clothing Company, and in agreeing to the voluntary bankruptcy of the corporation you were acting individually, as I get you?

A. Why I presume that might be the case.

Q. In arriving at the amount that the Clere Clothing Company had invested out there, as you say you did, when you fixed the amount of this note, was any allowance made for the moneys paid by Schlessinger on account of the note to the National Bank

(Testimony of Thomas H. Clere.)

of Commerce? A. There was.

Q. Was any amount allowed for the something like \$3,500 in preference claims, in claims that the trustee paid to the individuals whose names I have mentioned and turned over to you or to the Clere Clothing Company?

A. I don't know anything about that; I don't know who those people are at all.

Q. There was a charge made if you did pay anything to the Exchange Bank over the twenty-five per cent for that amount?

A. That is something I don't know anything about.

Q. What I want to get at is that you didn't pay out anything to the Exchange Bank and not include it in this note?

A. I know nothing about the Exchange Bank of any name or nature.

Q. Do you mean that you don't know nor did not then?

A. I didn't then; I know very little new about it.

Q. Then you don't know whether the Exchange Bank note was in the amount of \$26,272 or not?

A. I know nothing about the Exchange Bank.
[115]

Q. And you did not know anything about the return of this preference money?

A. No, sir, if there was, I knew nothing about it.

Q. Did you let them know by any act of yours any of the merchants in Spokane that the Prager-Schlesinger Company were selling these goods on consignment?

(Testimony of Thomas H. Clere.)

A. I don't recall ever saying a word to any one about that out there. We had been running or conducting the business as the business of the Clere Clothing Company when Gilmore was running it. It was moved down on to Howard Street about the time they reorganized the business.

Q. The sale in the old place was advertised as a sale of the Prager-Schlessinger Company stock?

A. I don't know how he did advertise it.

Q. And the sale in the other place while it was selling your goods on consignment was still advertising a sale of the Prager-Schlessinger Company?

A. I don't know. The bank account when Gilmore was conducting the sale was in the name of the Clere Clothing Company. I didn't know until in the summer of 1913 how the bank account had been run. I never knew how they carried their account from the time Prager-Schlessinger took it in August until after we had given them a bill of sale.

Q. Then you learned that it had been in the name of the Clere Clothing Company all the time?

A. The banker stated to me last July that he didn't care to have the Prager-Schlessinger name on his books, and he, therefore, for convenience sake let the account run along on his books under our name but honored the Prager-Schlessinger Company's checks.

Q. Did you ever instruct the Prager-Schlessinger Company [116] when they were conducting this sale as commission merchants not to purchase any goods from anybody else?

A. No, I never gave them that instruction.

(Testimony of Thomas H. Clere.)

Q. You knew that in conducting a business of that sort at times you would run out of sizes and at times would have to buy from local merchants, didn't you?

A. I presume the Prager-Schlessinger Company had to buy goods all over.

Q. Some of the goods were charged directly to the Clere Clothing Company, for instance, out there in Spokane.

A. I never knew that there were any goods charged to the Clere Clothing Company until I went out last July. I don't think I at any time have consulted with old man Prager or any of the stockholders of the company, other than Newton, as to the voting of the stock of the Prager-Schlessinger Company. I don't know whether Mr. Newton and myself ever disagreed on our vote of the stock at any of the meetings or my vote as trustee.

Q. Do you state now that the inventory that was shown you at the time this note was given amounted to \$30,600?

A. That was the amount of our goods that he had there; he had other goods besides that.

Q. And also the bills that you had against the Prager-Schlessinger Company amounted to exactly \$30,600? A. Whatever that note represented.

Q. So that the amount of goods on hand and the amount of moneys you had paid out and they were owing you for any purpose exactly agreed?

A. As per their inventory; they had other goods besides that.

Q. And in their \$30,640 was the balance due the

(Testimony of Thomas H. Clere.)

Clere Clothing Company to pay them in full instead of twenty-five [117] cents on the dollar, as per their composition?

A. Well, I don't just get that question.

Q. You don't remember whether that was one of the items or not? A. No.

Redirect Examination.

The memorandum that I had out there, mention of which has been made, was made by the bookkeeper of the Clere Clothing Company. I took his statement for it. Prager-Schlessinger Company did not pay the Clere Clothing Company any moneys which they have not been given credit for on the books of the Clere Clothing Company. I think the script of the Prager-Schlessinger Company that I had is out there in Mr. Newton's office now. These accommodation notes referred to were purely and simply accommodation notes. Mr. Schlessinger wrote us a letter stating that any notes he gave us were accommodation notes only and we must take care of them when they came due. That letter is either in Spokane or in my office. There were never any accommodation notes given by Schlessinger to me or to the Clere Clothing Company, which have not been paid. He never paid a cent of any of those accommodation notes. The Clere Clothing Company always paid them when they came due. We never made any charge against the Prager-Schlessinger Company for any of those notes so paid by the Clere Clothing Company. We never gave them credit for them or never charged them when we took them up. They

(Testimony of Thomas H. Clere.)

were purely and simply accommodation notes. The reason we took them was a few years before that they used to give us notes and we used to re-discount them. I never authorized, directly or indirectly, Childs or any other person to carry the Prager-Schlessinger Company account in the name of the Clere Clothing Company, and if it was done, it was done without my consent or knowledge, of either I or my Company. I never received a check from the Spokane store conducted under the name of Prager-Schlessinger Company, in any name other than the Prager-Schlessinger. [118] Every check we ever got was signed Prager-Schlessinger Company, by Louis A. Schlessinger, President.

Recross-examination.

Q. You say that the Prager-Schlessinger Company got pay for everything that they gave you, or paid you; if there was any money returned to you on account of these claims that were allowed by the referee and checks given and the checks turned over to you, whom were they credited to?

A. I don't ever remember of getting any. I don't know anything about it.

Q. Isn't it a fact that during the first part of Schlessinger's running the business, after he took it over from the Gilmore Company, that he signed the checks of the Clere Clothing Company, per Schlessinger, and that that continued for three or four months after he took it over?

A. I don't know that up to last July that he ever signed a check in our name.

(Testimony of Thomas H. Clere.)

Q. You did find out that he had for awhile?

A. He had signed one or two checks.

Q. Did you ever give them any authority?

A. Never.

Q. Your attention has been called to certain alleged checks having been turned over by creditors of the Prager-Schlessinger Company; did your company ever receive any checks from the distribution of the Prager-Schlessinger Company estate in the first bankruptcy? A. It did not.

Q. To your knowledge you never received any checks? None ever came to Syracuse?

A. None ever came to Syracuse. [119]

IT IS HEREBY STIPULATED AND AGREED by and between Wakefield & Wither-
spoon, attorneys for the Union Trust & Savings
Bank, Trustee in Bankruptcy for the Prager-Schles-
singer Co. and Belden & Losey, attorneys for the
claimant, Clere Clothing Co., that the above and fore-
going is a full, true and complete statement of the
evidence used upon the different hearings upon the
objections to the allowance of the claim of the Clere
Clothing Co., and is hereby approved.

Dated at Spokane, Washington, this 19th day of
December, 1914.

(Signed) WAKEFIELD & WITHERSPOON,
Attorneys for the Union Trust & Savings Bank,
Trustee in Bankruptcy for Prager-Schlessinger
Co.

(Signed) BELDEN & LOSEY,
Attorneys for Clere Clothing Co.

[Endorsements]: Bill of Exceptions. Received December 19, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. Filed in the U. S. District Court for the Eastern District of Washington. January 6, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy.

[120]

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

In the Matter of PRAGER-SCHLESSINGER CO.,
a Bankrupt.

Certificate of Trial Judge as to Evidence.

I, F. H. RUDKIN, District Judge in and for the Eastern District of Washington, Northern Division, do hereby certify that the above-entitled cause came on regularly for hearing before me, on review from the Referee in Bankruptcy, at a regular term of said Court, on the 8th day of October, 1914, the petitioner Clere Clothing Co. being represented by its counsel, Messrs. Belden & Losey, and the Union Trust & Savings Bank, Trustee in Bankruptcy, was represented by its counsel Wakefield & Witherspoon, and there being no further appearance in said cause, I do further certify that on said hearing, all the evidence in said cause was certified to and transmitted to me by the Referee in Bankruptcy, Hon. Sidney H. Wentworth, and that the evidence presented to me, and upon which said cause was heard by me, is as hereinafter set out; and I do further certify that the exhibits referred to in the evidence were considered

by me and said exhibits, being marked as shown in the evidence and ordered certified to the United States Circuit Court, are to be made a part of said record, the originals being used in place of having same transcribed.

Dated this 6th day of January, A. D. 1915.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Approved, Wakefield & Wither-
spoon, Attorneys for Trustee. Certificate of Trial
Judge as to Evidence. Filed in the U. S. District
Court for the Eastern District of Washington. Janu-
ary 6, 1915. W. H. Hare, Clerk. By S. M. Russell,
Deputy. [121]

*In the District Court of the United States, for the
Eastern District of Washington, Northern Di-
vision.*

In the Matter of the Estate of PRAGER-SCHLE-
SINGER COMPANY, Bankrupt.

Praeceptum for Transcript of Record.

To the Clerk of the District Court of the United
States for the Eastern District of Washington,
Northern Division:

You will please prepare transcript of the complete
record in the above-entitled case, to be filed in the
office of the Clerk of the United States Circuit Court
of Appeals for the Ninth Judicial Circuit, under
appeal to be perfected to said Court, and include in
said transcript, full proceedings, pleadings, papers,
records and files, to wit:

Order of Adjudication,
 Claim of the Clere Clothing Company,
 Objections filed to claim of Clere Clothing Company,
 Opinion of referee expunging said claim,
 Opinion of Hon. Frank H. Rudkin, on review of said referee's report,
 Order disallowing said claim on review,
 Petition for appeal, and allowance of appeal,
 Assignment of Errors,
 Citation,
 Bond on Appeal,
 Stipulation extending time to file Bill of Exceptions,
 Bill of Exceptions,
 Praecipe,
 Also any and all other record entries, pleadings, proceedings, papers and files necessary and proper to make a complete [122] record upon appeal in said cause.

Transcript to be prepared as required by law, and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

(Signed) BELDEN & LOSEY,
 Attorneys for Clere Clothing Co.

Service of the within Praecipe is hereby acknowledged this 28th day of November, A. D. 1914.

(Signed) WAKEFIELD & WITHERSPOON,
 Attorneys for Union Trust & Savings Bank, Trustee.

[Endorsements]: Praecipe for Transcript of Record. Filed in the U. S. District Court for the Eastern District of Washington. November 30, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy.
[123]

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

In the Matter of the Estate of PRAGER-SCHLESINGER COMPANY, a Corporation,
Bankrupt,

**Stipulation [Extending Time to File Record in
Appellate Court, and Re Transmission of
Original Exhibits, etc.].**

IT IS HEREBY STIPULATED AND AGREED by and between Wakefield & Witherspoon, attorneys for the Union Trust & Savings Bank, Trustee in Bankruptcy for Prager-Schlesinger Co., and Belden & Losey, attorneys for the Clere Clothing Co., as follows:

1. That the time within which to file in the above-entitled court, the record in the above-entitled action, may by order of this Court, upon the filing of this stipulation, be extended thirty days from date hereof.

2. That the original claims filed by the Clere Clothing Co. in the above-entitled action, together with all original exhibits noted in the Bill of Exceptions, may be transmitted to the Circuit Court of Appeals, upon the hearing of said cause, to be considered with like force and effect as though copies

thereof were certified to and made a part of the Bill of Exceptions herein.

Dated at Spokane, Washington, this 19th day of December, 1914, without waiving any rights as to matters referred to in motion to dismiss.

(Signed) WAKEFIELD & WITHERSPOON,
Attorneys for Union Trust & Savings Bank, Trustee
for Prager-Schlesinger Co.

(Signed) BELDEN & LOSEY,
Attorneys for Clere Clothing Co.

[Endorsements]: Stipulation. Filed in the U. S. District Court for the Eastern District of Washington. January 4, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [124]

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

In the Matter of the Estate of PRAGER-SCHLESINGER COMPANY, a Corporation,
Bankrupt.

Order [Extending Time to January 19, 1915, to Prepare Record, and Directing Transmission of Original Exhibits to Appellate Court (Copy)].

Upon stipulation of the parties hereto,

IT IS NOW HERE ORDERED that the time for preparing and submitting the record in the above-entitled action, and perfecting said appeal be, and the same is hereby extended to January 19th, 1915.

IT IS FURTHER ORDERED that the original claims filed by the Clere Clothing Co. in the above-entitled action, together with all original exhibits

noted in the Bill of Exceptions, be transmitted to this Court, and that upon the hearing of said cause, same be considered with like force and effect as though copies thereof were certified to and made a part of the Bill of Exceptions therein.

(Signed) WM. B. GILBERT,
One of the Judges of Said Court.

[Endorsements]: Order Extending Time. Filed in the U. S. District Court for the Eastern District of Washington. January 4, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [125]

—

**[Certificate of Clerk, U. S. District Court to
Transcript of Record.]**

United States of America,
Eastern District of Washington,—ss.

I, W. H. HARE, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing typewritten pages to be a full, true, correct and complete copy of the record and all proceedings had in said action as called for by the plaintiff and appellant in the praecipe for a transcript of the record herein, as the same remains of record and on file in the office of the Clerk of said District Court; and that the same constitutes the Record on Appeal from the order, judgment and decree of said District Court of the United States for the Eastern District of Washington to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

I further certify that I hereto attach and herewith transmit the original Order extending time for preparing and submitting the record and directing that the original exhibits noted in the Bill of Exceptions be transmitted to the said Court.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of eighteen dollars and thirty-five cents (\$18.35), and that the same has been paid to me by Belden & Losey, solicitors for complainant and appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at the City of Spokane, in said Eastern District of Washington, Northern Division, in the Ninth Judicial Circuit, this 7th day of January, A. D. 1915, and [126] the Independence of the United States of America the One Hundred and Thirty-ninth.

[Seal] W. H. HARE,
Clerk U. S. District Court for the Eastern District
of Washington.

[**Citation on Appeal (Original).**]

*United States Circuit Court of Appeals, for the
Ninth Circuit.*

In the Matter of PRAGER-SCHLESINGER CO.,
a Corporation, Bankrupt.

United States of America,
Ninth Judicial Circuit,—ss.

To the UNION TRUST & SAVINGS BANK,
Trustee, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in said Circuit, on the 24th day of December, 1914, pursuant to a petition on appeal and assignment of error filed in the Clerk's office of the District Court of the United States for the Eastern District of Washington, Northern Division, in the matter of Prager-Schlesinger Co., a corporation, bankrupt, to show cause, if any there be why the judgment rendered in said cause on the 10th day of October, 1914, denying and expunging from the list of claims filed in said cause, the claims of the Clere Clothing Co., and disallowing each of said claims, as proved by said Clere Clothing Co. before said Referee, in the sums of \$30,640 and \$1610.67, respectively, as in said petition on appeal mentioned, should not be corrected and why speedy justice should not be done in that behalf.

WITNESS the Hon. WM. B. GILBERT, Judge of said Circuit Court, this 25th day of November, in

the year of our Lord, 1914, and of the Independence of the United States of America, the one hundred thirty-ninth.

[Seal]

WM. B. GILBERT,
Circuit Judge. [127]

Service of the within Citation admitted at Spokane, Wash., this 27th day of November, 1914.

WAKEFIELD & WITHERSPOON,
Attys. for Union Trust & Savings Bank, Trustee for
Prager-Schlessinger Co.

[Endorsed]: No. 1742. United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of Prager-Schlesinger Co., a Corporation, Bankrupt. Citation. Filed in the U. S. District Court, Eastern Dist. of Washington. Nov. 27, 1914. Wm. H. Hare, Clerk. S. M. Russell, Deputy. [128]

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

In the Matter of the Estate of PRAGER-SCHLES-
SINGER CO., a Corporation,
Bankrupt.

**Order [Extending Time to January 19, 1915, to
Prepare Record, and Directing Transmission
of Original Exhibits to Appellate Court
(Original).]**

Upon the stipulation of the parties hereto,

IT IS NOW HERE ORDERED that the time for preparing and submitting the record in the above-entitled action, and perfecting said appeal be, and the same is hereby extended to January 19th, 1915.

Order [Extending Time to File Record in Appellate Court to January 19, 1915 (Original).]

IT IS FURTHER ORDERED that the original claims filed by the Clere Clothing Co. in the above-entitled action, together with all original exhibits noted in the Bill of Exceptions, be transmitted to this Court, and that upon the hearing of said cause, same be considered with like force and effect as though copies thereof were certified to and made a part of the Bill of Exceptions therein.

WM. B. GILBERT,

One of the Judges of Said Court.

O. K.—BELDEN & LOSEY.

O. K.—WAKEFIELD & WITHERSPOON.

[129]

[Endorsed]: In the United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of the Estate of Prager-Schlessinger Co., a Corporation, Bankrupt. Order. Filed in the U. S. District Court, Eastern Dist. of Washington. Jan. 4, 1915. Wm. H. Hare, Clerk. S. M. Russell, Deputy. [130]

[Proof of Claim of Clere Clothing Co., for \$1,610.67.]

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., Feby. 4, 1913.

Sold to M Prager Schlesinger Co

Spokane, Wash.

Terms..... Shipped by Md c/o Soo Line

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made.

Strictly in Accordance With Terms on Bill.

6071 H	3	Suits	12 00	36 00
6070 D	3	"	12 00	36 00
6218 Stout	3	"	12 50	37 50
6218 H	6	"	12 50	75 00
6058 Stout	4	"	11 00	44 00
6058 H	5	"	11 00	55 00
6058 A	5	"	11 00	55 00
6321 H	3	"	15 00	45 00
6067 Long	3	"	12 00	36 00
6067 A	4	"	12 00	48 00
6216 H	8	"	12 50	100 00
6393 H	2	"	18 00	36 00
6219 A	6	"	12 50	75 00
6097 St	4	"	12 00	48 00
6097 H	4	"	12 00	48 00
6097 Long	3	"	12 00	36 00
6097 A	2	"	12 00	24 00
6032 K	3	Coats & Pants	10 00	30 00

 864 50

Duplicate.

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Mar. 12, 1913.

Sold to M Prager Schlesinger Co

Spokane, Wash.

Terms..... Shipped by Md c/o Soo Line

If this Bill differs from your understanding of purchase, please notify us at once, settlement must be made.

Strictly in Accordance With Terms on Bill.

6141	Long	2	Suits	14 00	28 00
6141	H	4	“	14 00	56 00
6091	H	5	“	12 00	60 00
6119	H	5	“	13 00	65 00
6282	H	3	“	13 50	40 50
6219sh	Stout	4	“	12 50	50 00
6027	St	5	“	10 00	50 00
6092	G	3	“	12 00	36 00
6201	A	3	“	12 50	37 50
6023	E	3	“	10 00	30 00
6030	A	3	“	10 00	30 00
6030	Long	3	“	10 00	30 00
6032	D	3	“	10 00	30 00
6027sh	Stout	4	“	10 00	40 00
6023	L	3	Coats & Pants	10 00	30 00
6092	K	3	“ “	12 00	36 00

649 00

Duplicate.

Clere Clothing Company vs.

CLERE CLOTHING COMPANY,
Makers of

“Clere Clothes,”

Syracuse, N. Y., April 21, 1913.

Sold to M Prager Schlesinger Co

Spokane, Wash.

Terms..... Shipped by Express.

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made.

Strictly in Accordance With Terms on Bill.

5829 A	1 Suit	15 00	
6004 A	1 “	15 00	
6160 A	1 “	10 50	40 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., April 29, 1913.

Sold to M Prager Schlesinger Co

Spokane, Wash.

Terms Net. Shipped by Parcel Post.

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made.

Strictly in Accordance With Terms on Bill.

6058 C	1 Pant	4 00	
		Postage	24
x		Ins	43 4 27

Duplicate.

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., May 6, 1913.

Sold to M. Prager Schlesinger Co

Spokane, Wash.

Terms:

Custom Goods net Cash.....

Monday following shipment.

(Settlement to be made Strictly in accordance with Terms on Bill.)

Shipped by Parcel Post.

		15 00	
1 Suit	Geo W Burke	Postage	84
		Ins	05 15 89

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., May 20, 1913.

Sold to M Prager Schlesinger Co

Spokane Wash

Terms:

Custom Goods Net Cash.....

Monday following shipment.

Clere Clothing Company vs.

(Settlement to be made Strictly in accordance
with Terms on Bill.)

	Shipped by Ex.			
	1800			
1 Suit Ex Pant Max Stintman	500	23	00	
	<hr style="width: 10%; margin: 0 auto;"/>			
	425			
1 Pant Geo W Burke Cuff Pant	25	4	50	27 50
Duplicate				

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., June 10, 1913.

Sold to M Prager Schlesinger Co

Spokane Wash

Terms:

Custom Goods Net Cash.....

Monday following shipment.

(Settlement to be made Strictly in accordance
with Terms on Bill.)

	Shipped by Parcel Post.		
	450		
2 Pants	400	8	50
	Postage		48
	Insurance		03
4		<hr style="width: 10%; margin: 0 auto;"/>	

In the District Court of the United States, in and for the Eastern District of Washington.

No. In Bankruptcy.

In the Matter of PRAGER-SCHLESSINGER CO., Bankrupt

PROOF OF CLAIM

STATE OF New York COUNTY OF Onondaga, ss.

At Syracuse, in said County and State, on the 15th day of August, A. D. 1913, came James E. Clancy of Syracuse and made oath and says:

(1) That he is treasurer (or equivalent officer) of the Clere Clothing Company, a corporation, incorporated under and by the laws of the State of New York and carrying on business at Syracuse, in the County of Onondaga and State of New York, and that he is duly authorized to make this proof;

(2) That he is one of the firm of, consisting of himself and of in the County of in the State of

That the above named bankrupt, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and is still justly and truly indebted to said Corporations in the sum of one thousand six hun-

(Insert "said corporation," or "this deponent's said firm, or "said [Name Creditor]," as the case may be.)

dred-ten and 67/100 dollars, with interest from, 19., at per cent. per annum; that the nature and consideration of said debt is as follows: Merchandise sold and delivered to said bankrupt at its request as per itemized state-

a corpor- n use this graph and re par. 2.

a partner- o use this graph and re par. 1.

ment filed herewith and made part hereof, ~~(or promissory notes, originals of which are filed herewith and made a part hereof)~~. That the consideration of said promissory note is as follows.....

Draw a line through parts of this paragraph underscored in red if a note has been received.

.....
That no part of said debt has been paid except.....
.....that there are no set-offs or counter claims to the same except..... and that claimant has not, nor has any person by his order, or to the knowledge or belief of said deponent, for claimant's use, had or received any manner of security for said debt whatever. That said claim consists of an open account due on That no judgment has been rendered on said debt *nor has any note been received for such account.*

Ignore this paragraph except when proof can not be made by the treasurer of corporation or a member of the firm, or the individual who is the creditor, in which case show some good cause, such as absence, illness, etc., for such failure.

And this deponent further says, that this affidavit can not be made by
.....

(Sign here) JAS. E. CLANCY,
Treasurer.

SUBSCRIBED AND SWORN to before me this 15th day of August, 1913.

JOHN C. BOLAND,
(Notary Public.)
Onon. Co., N. Y.

My commission expires Mar. 30, 1915.

POWER OF ATTORNEY.

To E. H. Belden, W. C. Losey or H. R. Newton
The undersigned Clere Clothing Co., of Syracuse, in the County of Onondaga and State of New York, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt

aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other time and place as may be appointed by the court for holding such meeting or meetings, or at which meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition, and for any other purpose whatsoever in the interest of the undersigned, with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorney that may have been given by the undersigned.

In Witness Whereof, the name and seal of the

undersigned is hereby affixed the 15th day of August
A. D. 1913.

(Sign here) CLERE CLOTHING CO., (Seal)

Signature of Claimant, whether corporation, firm or individual.

By JAS. E. CLANCY,

Treasurer.

Signed, sealed and delivered in the presence of
THOMAS K. SMITH.

State of New York,
County of Onondaga,—ss.

BE IT REMEMBERED that on this 15th day of August, 1913, personally appeared before me James E. Clancy, who being by me first duly sworn, did say that he is duly authorized to execute the foregoing power of attorney in behalf of said creditor, and acknowledged that he executed the said power of attorney for and on behalf of said Clere Clothing Co. and to be his free act and deed and the free act and deed of said creditor and that he is duly authorized to act.

JOHN C. BOLAND,

Notary Public in and for the County of Onondaga,
State of New York.

[Seal]

[Endorsed]: Allowed Aug. 25, 1913. S. H. W., Referee. United States District Court, Eastern District of Wash. In the Matter of Prager-Schlessinger Co., Bankrupt. Proof of Claim and Power of Attorney. Claim of Clere Clothing Co., Syracuse, N. Y. (P. O. Address.) Amount \$1610 67/100. Filed Aug. 25, 1913, at 10 o'clock A. M. Sidney H. Wentworth, Referee.

No. 2563. U. S. Circuit Court of Appeals, for the Ninth Circuit. Exhibit Original Proof of Claim of

Clere Clothing Co. for \$1610.67. Received Jan 12, 1915. F. D. Monckton, Clerk.

\$30,640.00

Spokane, Washington Jany. 25, 1913.

On demand after date, without grace I promise to pay to the order of Clere Clothing Co. Thirty thousand six hundred forty no/100 Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon, in like Gold Coin at the rate of six per cent per annum from date of demand until paid, for value received. Interest to be paid on demand, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this Note. And in case suit or action is instituted to collect this Note, or any portion thereof I promise and agree to pay, in addition to the costs and disbursements provided by statute a reasonable sum in like Gold Coin, for Attorney's fees in said suit or action.

Due Demand. At office Clere Clothing Co. No. Syracuse, N. Y.

[Seal] PRAGER SCHLESINGER CO.,
By L. A. SCHLESINGER,
President.

Attest: HENRY R. NEWTON,
Secretary.

[Proof of Claim of Clere Clothing Co. for \$30,640.00,
etc.]

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Aug 19 1912

Sold to M Clere Clo Co

Spokane Wash

Terms Nov. 1

Shipped by DS&W c/o CMSt. c/o CM&PS

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5597-O	2	Overcoats	15 75	31 50
5565 J	7	“	12 50	87 50
5660 a	4	Suits	10 00	40 00
5741 H	3	“	13 00	39 00
5809 a	5	“	16 50	82 50
5709 a	5	“	12 00	60 00
5674 Long	4	“	10 00	40 00
5801 a	6	“	15 00	90 00
5692 B	5	“	11 00	55 00

525 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Aug 23 1912

Sold to M. Clere Clo Co

Spokane Wash

Terms Nov 1/13

Shipped by DS&W c/o CM&StP.

c/o CM&PSRR

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5964	a	3	Suits	15 00	45 00
5661	H	7	“	10 00	70 00
5766	H	3	“	14 00	42 00
5762	F	2	“	14 00	28 00
5860	a	4	“	11 50	46 00
5760	H	4	“	14 00	56 00
5664	a	2	“	10 00	20 00
5828	H	9	“	13 50	121 50
5802	a	3	“	15 00	45 00
5718	a	3	“	12 00	36 00

509 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., Aug 29 1912

Sold to M Clere Clo Co

Spokane Wash

Terms.....

Shipped by DS&W c/o CM&StP c/o CM&PS

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance with Terms on Bill.

5828 Long	5	Suits	13 50	67 50
5860 H	4	"	11 50	46 00
5860 St	4	"	11 50	46 00
5996 a	2	"	18 00	36 00
5828 St	6	"	13 50	81 00
5690 Long	6	"	11 00	66 00
5664 a	2	"	10 00	20 00
5539 s	4	Overcoats	13 50	54 00
5566 L	4	"	12 50	50 00

 466 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Sept. 5, 1912.

Sold to M Clere Clothing Co

Spokane Wash

Terms Nov. 1.

Shipped by DS&W c/o CM&StP.

c/o CM&PSRR.

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5633	S	3	Overcoats	17 75	53 25
5500	P	4	“	11 25	45 00
5601	S	4	“	15 50	62 00
5565	J	2	“	12 50	25 00
5607	P	4	“	14 75	59 00
5504	P	5	“	11 25	56 25
5502	P	5	“	11 25	56 25
5554	S	3	“	14 00	42 00
5585	P	2	“	15 00	30 00
5522	L	3	“	12 50	37 50
5507	P	6	“	11 25	67 50
5602	P	3	“	15 50	46 50
5549	P	2	“	16 50	33 00
5733	a	4	Suits	13 00	52 00
5733	c	1	“		13 00

678 25

Duplicate

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., Sept. 16, 1912.

Sold to M Clere Clo Co

Spokane Wash

Terms Nov 1

Shipped by DS&W c/o CM&StP.

c/o CM&PSRR.

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5630	S	2	Overcoats	17 00	34 00
5614	T	2	"	16 50	33 00
5503	P	4	"	11 25	45 00
5575	T	3	"	15 50	46 50
5516	N	3	"	11 50	34 50
5693	G	4	Suits	11 00	44 00
5734	F	4	"	13 00	52 00
5688	a	4	"	11 00	44 00
5841	St	3	"	10 50	31 50
5735	c	4	"	13 00	52 00
5662	a	2	"	10 00	20 00
5791	G	3	"	15 00	45 00
5742	B	5	"	13 00	65 00
5767	B	3	"	14 00	42 00
5746	a	5	"	13 00	65 00
5778	B	6	"	14 00	84 00

Book of Custom Samples

737 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Sept. 20, 1912.

Sold to M Clere Clothing Co

Spokane Wash

Terms Nov 1

Shipped by DS&W c/o CM&StP.

c/o CM&PSRR.

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

4563	R	1	Overcoat	13 50	13 50
4563		2	“	13 50	27 00
4606		1	Presto Overcoat		12 50
5631	V	1	Overcoat		15 00
8594		3	“	12 50	37 50
5541	P	3	“	13 00	39 00
5983	G	3	Suits	16 50	49 50
5881	a	3	“	12 50	37 50
5828	G	8	“	13 50	108 00
5827	H	14	“	12 50	175 00
					<hr/>
					514 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., Sept. 24, 1912.

Sold to M Clere Clo Co

Spokane Wash

Terms Nov 1

Shipped by DS&W c/o CM&StP c/o CM&PSRR.

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5829	G	4	Suits	15 00	60 00
5680	St	5	"	11 00	55 00
5996	G	2	"	18 00	36 00
5841	H	4	"	10 50	42 00
5841	a	4	"	10 50	42 00
5935	a	6	"	13 50	81 00
5906	a	6	"	13 50	81 00
5795	a	4	"	15 00	60 00
					457 00

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Oct. 3, 1912.

Sold to M Clere Clothing Co

Spokane Wash

Terms:

Custom Goods Net Cash.....

Monday following shipment.

(Settlement to be made Strictly in accordance
with Terms on Bill.)

Shipped by.....

1	Suit	W. H. Kell		15 00	
2355	5	yds. cloth (sponged)	2 50	12 50	27 50
				<hr/>	

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Oct. 3, 1912.

Sold to M Clere Clothing Co

Spokane Wash

Terms Net.

Shipped by.....

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5626 St 1 Pant 3 25

Duplicate

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., Oct. 9, 1912.

Sold to M Clere Clothing Co

Spokane Wash

Terms Nov 1/12

Shipped by DS&W c/o CM&StP

c/o CM&PSRR

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5680	H	3	Suits	11 00	33 00
5800	G	3	"	15 00	45 00
5800	H	2	"	15 00	30 00
5829	a	6	"	15 00	90 00
5822	H	3	"	16 50	49 50
5506	P	2	Overcoats	11 25	22 50
5531	O	3	"	12 50	37 50
5634	S	3	"	17 00	51 00

 358 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Oct. 12, 1912.

Sold to M Clere Clo Co

Spokane Wash

Terms.....

Shipped by DS&W c/o CM&St

c/o CM&PSRR

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

F. E. Harris	1 Suit	W. D. Brockway	19 75
“	“	1 Ex Pant	“ “ 5 25
“	“	1 Suit	W. L. Peck 23 00
“	“	1 Ex Pant	“ “ 7 00
“	“	1 Suit	F. H. Filbert 20 00
	1 C & P	Kehoe	16 25
	1 Ex Pant	“	5 25
Decker Co.	1 C & P	M. Walrus	13 50
W. J. Varley	1 “	J. G. Faygard	13 50
C. Yogel	1 “	C. Yogel	21 00
Bodger & R.	1 Suit	Fred Bushey	18 00
Hatem	1 “	A. Hatem	18 50
Holcombe & B.	1 “	J. Ryan	20 00
W. J. Varley	1 C & P	J. A. Bird	13 50
“	1 “	B. C. Brown	14 00
Batchelder	1 Suit	H. P. Baldwin	18 00
“	1 Ex Pant	“	5 25

251 75

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Oct. 19, 1912.

Sold to M Clere Clo Co

Spokane Wash

Terms: Custom Goods Net Cash.....

Monday following shipment.

(Settlement to be made Strictly in accordance with
Terms on Bill.)

Shipped by.....

1 Suit	R. H. Peck	22 50	
1 “	Max Stretman	18 00	40 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Oct 21 1912

Sold to M Clere Clo Co

Spokane Wash

Terms..... Shipped by With Other Goods

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

1 Suit	W H Nye Sargent	13 50	
1 “	Holcomb & Brusso Brusso	22 50	36 00

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Oct 21 1912

Sold to M Clere Clothing Co

Spokane Wash

Terms Nov 1 Shipped by DS&W c/o CM&StP

c/o CM&PSRR

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5850	A	5	Suits	10 50	52 50
5594	S	4	Overcoats	15 50	62 00
5616	S	3	“	16 25	48 75
5609	S	4	“	15 50	62 00
5530	P	4	“	12 50	50 00
5638	J	4	“	15 00	60 00
					335 25

Duplicate

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., Oct 22 1912

Sold to M Clere Clo Co

Spokane Wash

Terms Nov 1

Shipped by Express

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5784 a	12	Suits	12 50	150 00
5620 P	2	Overcoats	16 25	32 50
				182 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., Oct 25 1912

Sold to M Clere Clo Co

Spokane Wash

Terms Dec 1

Shipped by Express

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5650 AW	1	Suit		13 00
---------	---	------	--	-------

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Nov 1 1912

Sold to M Clere Clo Co

Spokane Wash

Terms Dec 1

Shipped by Express

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5528 P	4	Overcoats	12 50	50 00
5904 H	3	Suits	12 50	37 50
5904 C	2	“	12 50	25 00
				112 50

Completes Order

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Nov 12 1912.

Sold to M Clere Clo Co

Spokane Wash

Terms: Custom Goods Net Cash....

Monday following shipment.

(Settlement to be made Strictly in accordance with Terms on Bill.)

Shipped by.....

3 50

1 Vest J. F. Vgier Ex Size 50 4 00

Ex Charges Mail Rate 20 4 20

Duplicate

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., Nov. 20 1912

Sold to M Clere Clothing Co.

Spokane Wash

Terms..... Shipped by M. D. c/o Soo Line

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5190	2	Raincoats	10 50	21 00
5193	5	"	12.50	62 50
5192	3	"	12 50	37 50
8575	1	Overcoat		8 50
4509 L	5	"	13 50	67 50
2528	1	"		13 50
4539 J	10	"	13 50	135 00
1541	5	"	12 50	62 50
4608 L	4	"	13 50	54 00
6909	2	"	12 50	25 00
4569	5	"	12 50	62 50
4570	4	"	12 50	50 00
4644	4	"	13 75	55 00
5586 P	2	"	13 75	27 50
4589 M	6	"	12 50	75 00

 757 00

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Nov 22 1912

Sold to M Clere Clo Co

Spokane Wash

Terms Net

Shipped by Express

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5784 a 1 Pant

3 75

Duplicate

CLERE CLOTHING COMPANY,

Makers of

“Clere Clothes,”

Syracuse, N. Y., Dec 16 1912

Sold to M Clere Clo Co

Spokane Wash

Terms Net

Shipped by Express

If this Bill differs from your understanding of purchase, please notify us at once, as settlement must be made

Strictly in Accordance With Terms on Bill.

5834 St 1 Pant

4 50

Duplicate

CLERE CLOTHING COMPANY,

Makers of

"Clere Clothes,"

Syracuse, N. Y., Dec 27 1912

Sold to M Clere Clo Co

Spokane Wash

Terms: Custom Goods Net Cash. . . .

Monday following shipment.

(Settlement to be made Strictly in accordance with
Terms on Bill.)

Shipped by Ex.

1 Pant E A Buchanan

5 00

Duplicate.

State of New York,

County of Onondaga,—ss.

James E. Clancy, being first duly sworn, on oath
deposes and says:

That he is the Treasurer of the Clere Clothing Company, and has occupied said position for 1 year and 6 mos.; that he has read the attached Proof of Claim, executed by T. H. Clere; knows the contents thereof, and that the same is true, as he verily believes; that the only knowledge which this affiant has as to said Proof of Claim is information received by him from T. H. Clere, President of the Clere Clothing Company; that T. H. Clere is the Officer of the Clere Clothing Company, who had personal charge and supervision of all the transactions of the Clere Clothing Company and Prager-Schles-

singer Co., out of which the attached claim arose.

Further affiant saith not.

JAS. E. CLANCY.

Subscribed and sworn to before me this 15th day of August, 1913.

[Seal]

JOHN C. BOLAND,

Notary Public in and for the State of New York,
Residing at Syracuse, Onondaga County, New
York.

*In the District Court of the United States, in and for
the Eastern District of Washington, Northern
Division.*

No. ——. IN BANKRUPTCY.

PROOF OF CLAIM.

In the Matter of PRAGER SCHLESSINGER CO.,
Bankrupt.

State of New York,
County of Onondaga,—ss.

At Syracuse, in said County and State, on the 15th day of August, 1913, came T. H. Clere of Syracuse, and made oath and says:

That he is President of the Clere Clothing Company, a corporation, incorporated under the laws of the State of New York, and carrying on business at Syracuse, in the County of Onondaga, in the State of New York, and that he is duly authorized to make this proof;

That the above named bankrupt, the person against whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing

of this petition and is still, justly and truly indebted to the Clere Clothing Company, in the sum of Thirty Thousand Six Hundred Forty Dollars (\$30,640.00) together with interest from May 21st, 1913; that the nature and consideration of said debt is as follows, to wit:

That the Clere Clothing Company at the time of the former bankruptcy of Prager Schlessinger Co. advanced to Prager Schlessinger Co. the sum of Twenty-six Thousand Two Hundred Forty-seven Dollars (\$26,247.00) in order to effect a composition with the creditors of said Prager-Schlessinger Co.; that in consideration of said sum, on the — day of May, 1912, Prager Schlessinger Co., acting by and through its duly authorized officers, sold to the Clere Clothing Company, in bulk, its entire stock of merchandise, furniture and fixtures, which merchandise, furniture and fixtures was estimated to be of the value of approximately Thirty Thousand Dollars (\$30,000); that said merchandise, furniture and fixtures was consigned by the Clere Clothing Company to Prager Schlessinger Co. and was left with said Prager-Schlessinger Co. for the purpose of sale; that thereafter additional merchandise was consigned to the said Prager Schlessinger Co. of the value of Six Thousand Twenty-four & 95/100 Dollars (\$6024.95), as more fully appears from the itemized invoices hereto attached;

That on or about the 25th day of January, 1913, the Clere Clothing Co. submitted a proposition to the bankrupt whereby said Clere Clothing Company offered to sell to the Prager-Schlessinger Co.

in bulk the entire stock of merchandise, furniture and fixtures belonging to the Clere Clothing Co. and in the possession of the Prager-Schlessinger Co., on consignment, for the sum of Thirty Thousand Six Hundred Forty Dollars (\$30,640.00), and said Clere Clothing Company agreed to accept in payment therefor the note of the said Prager-Schlessinger Co., payable on demand; that at a meeting of the Trustees of said Prager-Schlessinger Co., duly called and held, on the 25th day of January, 1913, by a unanimous vote of the Trustees, said proposition was accepted, and the President and Secretary were authorized to execute the Company Note for the sum of Thirty Thousand Six Hundred Forty Dollars (\$30,640.00); that said note was thereupon duly executed and delivered to the Clere Clothing Company, which note is hereto attached and made a part hereof. That demand for payment thereof was made on May 21st, 1913.

That no part of said debt has been paid;

That there are no *sett-offs* or counter-claims to the same, and that claimant has not, nor has any person by his order, or to the knowledge or belief of said deponent, for claimant's use, had or received any manner of security for said debt, whatever;

That no judgment has been rendered on said debt;

And this deponent further says that this affidavit can not be made by the Treasurer of the Clere Clothing Company because all of the transactions between the Prager Schlessinger Co. and the Clere Clothing Company were carried on by this affiant, and that

this affiant has personal knowledge of said transaction.

T. H. CLERE.

President, Clere Clothing Company.

Subscribed and sworn to before me this 15th day of August, 1913.

[Seal]

JOHN C. BOLAND,
Notary Public.

My commission expires Mar. 30, 1915.

POWER OF ATTORNEY.

To E. H. BELDEN, W. C. LOSEY or H. R. NEWTON: The undersigned, Clere Clothing Company, of Syracuse, in the County of Onondaga, State of New York, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other time and place as may be appointed by the court for holding such meeting or meetings, or at which meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in choice of trustee or trustees of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote at any other meeting or meetings

of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition and for any other purpose whatsoever in the interest of the undersigned with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorney that may have been given by the undersigned.

In Witness Whereof, the name and seal of the undersigned is hereby affixed the 15th day of August, A. D. 1913.

Signed, sealed and delivered in the presence of
[Seal] CLERE CLOTHING COMPANY.

By T. H. CLERE,
President.

State of New York, County of Onondaga, ss.

BE IT REMEMBERED that on this 15th day of August, 1913, personally appeared before me T. H. Clere, who, being by me first duly sworn, did say that he is duly authorized to execute the foregoing power of attorney in behalf of said creditor, and acknowledged that he executed the said power of attorney for and on behalf of said Clere Clothing Company and to be his free act and deed and the free act and deed of said creditor, and that he is duly authorized to act.

[Seal] JOHN C. BOLAND,
Notary Public in and for the County of Onondaga,
State of New York.

No. 2563. U. S. Circuit Court of Appeals for the Ninth Circuit. Exhibit Original Proof of Claim of Clere Clothing Co. for \$30,640.00. Received Jan. 12, 1915. F. D. Monckton, Clerk.

[Endorsed]: No. ——. Allowed Aug. 25, 1913. S. H. W., Referee. In the District Court of the United States for the Eastern District of Washington, Northern Division. In the Matter of Prager-Schlessinger Co., Bankrupt. Proof of Claim. Clere Clothing Co., amount 30,640 and int. at 8% from May 21, 1913. Filed Aug. 25, 1913, at 10 o'clock A. M. Sidney H. Wentworth, Referee.

[Endorsed]: No. 2563. United States Circuit Court of Appeals, for the Ninth Circuit. Clere Clothing Company, a Corporation, Appellant, vs. The Union Trust & Savings Bank, a Corporation, Trustee in Bankruptcy of the Estate of Prager-Schlessinger Company, a Corporation, Bankrupt, Appellee. In the Matter of the Estate of Prager-Schlessinger Company, a Corporation, Bankrupt. Transcript of Record. Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed January 11, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the United States Circuit Court of Appeals, for the
Ninth Circuit.*

No. 2563.

In the Matter of the Estate of PRAGER-SCHLES-
SINGER CO., a Corporation,
Bankrupt.

Stipulation.

IT IS HEREBY STIPULATED AND AGREED by and between Belden & Losey, attorneys for the Clere Clothing Co. and Wakefield & Witherspoon, attorneys for the Union Trust & Savings Bank, a corporation, Trustee in Bankruptcy, for the Prager-Schlessinger Co., a corporation, that in the preparation of the transcript of record, by the Clerk of the above-entitled court, all original exhibits shall be excluded therefrom, save and except the two claims filed by the Clere Clothing Co. in the above-entitled action, but that either party to these proceedings, upon the argument thereof, may refer to said original exhibits, the same as though same were included and printed in the original transcript herein.

Dated at Spokane, Washington, this 26th day of January, A. D. 1915.

BELDEN & LOSEY,

Attorneys for Clere Clothing Co.

WAKEFIELD and WITHERSPOON,

Attorneys for Union Trust & Savings Bank, Trustee.

[Endorsed]: No. 2563. In the United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of the Estate of Prager-Schlessinger Co., a Corporation, Bankrupt. Stipulation. For Omission of Certain Original Exhibits from Printed Transcript of Record. Filed Jan. 29, 1915. F. D. Monckton, Clerk.